

EXHIBIT 4

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19 Civ. 1752 (PAE)

4 - - - - - x
VIVIAN XIANG,

5
6 Plaintiff,

7 - against -

8 EAGLE ENTERPRISES, LLC, MARKET
AMERICA, INC., AMY REMACHE,
SHERRY SPESOCK, and STAR HOGAN,

9
10 Defendants.

11 - - - - - x
12 February 5, 2021
13 10:00 a.m.

14
15 DEPOSITION of GLADYS FRANKEL, PhD, an Expert Witness
16 for the Plaintiff, taken by the Defendants, held remotely
17 via Zoom before Sara K. Killian, a Registered Professional
18 Reporter, Certified Court Reporter and Notary Public of
19 the State of New York.
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A P P E A R A N C E S :

DEREK SMITH LAW GROUP, PLLC

Attorneys for Plaintiff

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BY: DANIEL ALTARAS, ESQ.

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BY: KEITH A. MARKEL, ESQ.

THERESA D'ANDREA, ESQ.

ALSO PRESENT:

ROSS COLBY, Veritext Concierge Tech

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and among counsel for the respective parties hereto, that the sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED all objections except as to form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

* * *

1

2 G L A D Y S F R A N K E L, P h D, after having
3 first been duly sworn by a Notary Public of the
4 State of New York, was examined and testified as
5 follows:

6 EXAMINATION BY

7 MR. MARKEL:

8 Q. Please state your name and address
9 for the record.

10 A. Gladys Frankel and since it's a
11 public record, I'm not giving my home address, so
12 you have my email address,
13 doctorgladysfrankel@gmail.com.

14 MR. MARKEL: Off the record for a
15 second.

16 (Discussion off the record.)

17 Q. Good morning, Dr. Frankel. My name
18 is Keith Markel. I represent Market America,
19 Eagle Enterprises, Sherry Spesock, Amy Remache in
20 the action filed in the Southern District of New
21 York.

22 I'll be asking you a series of
23 questions this morning. If there are any
24 questions that you don't understand or you need me
25 to rephrase, please let me know.

1 G. Frankel, PhD

2 A. Okay. I'm sorry. Could I -- I just
3 wanted to note that I would like a copy of the
4 transcript so I can review for corrections. I'll
5 just have that on the record. Thank you.

6 Q. We'll provide you with a copy of your
7 transcript.

8 Again, if there are any questions
9 that you don't understand, please ask me and I can
10 rephrase it. If at any point in time you need to
11 take a break, you need to use the bathroom, just
12 let me know. As long as there's no pending
13 question, we're happy to do that.

14 I will refer at times to Market
15 America, Eagle Enterprises, Sherry Spesock or Amy
16 Rémache collectively as "the defendants." I may
17 refer to them collectively as "Market America," I
18 may refer to them collectively as "Eagle
19 Enterprises." It's not intended to confuse you.
20 I'll be referring to them as if they're one and
21 the same.

22 Do you understand that?

23 A. Yes.

24 Q. You're doing a great job, but I want
25 to confirm that all your responses are audible

1 G. Frankel, PhD

2 because the court reporter take down take any
3 nodding of the head or any responses that may not
4 be audible to the court reporter.

5 Do you understand that?

6 A. Yes.

7 Q. Okay.

8 Do you understand that your testimony
9 today is under oath?

10 A. Yes.

11 Q. Are you represented by counsel today?

12 A. Not directly.

13 Q. What do you mean by not directly?

14 A. I mean Daniel is present.

15 Q. But is Daniel your attorney?

16 A. Not my direct attorney. He's the
17 attorney for the client.

18 Q. When you refer to the client, are you
19 referring to Plaintiff Vivian Xiang?

20 A. Yes.

21 Q. But Mr. Altaras doesn't represent you
22 personally?

23 A. Not personally.

24 Q. Does Mr. Altaras represent your
25 employer?

1 G. Frankel, PhD

2 A. No.

3 Q. Okay.

4 Are you represented by the Derek
5 Smith Law Group?

6 A. No.

7 Q. Are you paying Mr. Altaras' firm
8 today for your testimony?

9 A. No.

10 Q. Is Mr. Altaras' firm paying you today
11 for your testimony?

12 A. No.

13 Q. Is there any condition in which you
14 don't believe that you can testify truthfully
15 today?

16 A. No.

17 Q. Are you taking any prescription drugs
18 that would otherwise prevent you from testifying
19 truthfully today?

20 A. No.

21 Q. Are you taking any over-the-counter
22 medicine that would otherwise prevent you from
23 testifying truthfully today?

24 A. No.

25 Q. Have you consumed any drugs or

1 G. Frankel, PhD

2 alcohol in the last 24 hours that would impair
3 your ability to testify truthfully today?

4 A. No.

5 Q. What is your full name for the
6 record?

7 A. Gladys Frankel.

8 Q. Have you been known by any other
9 names other than Gladys Frankel?

10 A. Yes.

11 Q. What are those?

12 A. Gladys Rothenberg.

13 Q. Is Gladys Rothenberg your maiden
14 name?

15 A. No.

16 Q. Is Gladys Rothenberg your married
17 name?

18 A. Yes.

19 Q. In your professional career, do you
20 go by Gladys Frankel or Gladys Rothenberg?

21 A. Gladys Frankel.

22 Q. What's your highest level of
23 education?

24 A. Doctoral degree.

25 Q. What was your degree in?

1 G. Frankel, PhD

2 A. Clinical psychology.

3 Q. And where did you receive your
4 degree?

5 A. Columbia University.

6 Q. And what year did you receive your
7 degree?

8 A. 1981.

9 Q. What was your thesis in for your PhD?

10 A. In psychology.

11 Q. Was there a specialty within the
12 field of psychology?

13 MR. ALTARAS: Objection.

14 MR. MARKEL: You can answer.

15 When Mr. Altaras objects, he's just
16 doing so for the record.

17 And we should state for the record
18 that the parties have agreed to the federal
19 stipulations to reserve all objections with
20 the exception of form to trial.

21 Q. Dr. Frankel, you can answer the
22 question.

23 A. Would you kindly repeat your
24 question?

25 Q. Within psychology, was there a

1 G. Frankel, PhD

2 specific specialty that you were focused on in
3 your PhD degree?

4 A. Yes.

5 Q. And what was that?

6 A. Clinical and social psychology.

7 Q. Did you take any courses in
8 discrimination for that degree?

9 A. No.

10 Q. Did you engage in any training
11 programs for that degree?

12 A. Training programs, yes.

13 Q. What were those training programs?

14 A. An internship in clinical psychology.

15 Q. Where did you do your internship at?

16 A. New York University Medical Center.

17 Q. Was there a specific department that
18 you worked in for your internship?

19 A. Yes.

20 Q. What was that?

21 A. Department of Psychiatry.

22 Q. Did you see patients during your
23 internship?

24 A. Yes.

25 Q. And did you see patients who had

1 G. Frankel, PhD

2 claimed they were discriminated against as part of
3 your internship?

4 A. I would not know that.

5 Q. That was not part of your discussion
6 with those patients when you were an intern?

7 A. As an intern, I would be focused on
8 the pathology that they were presenting.

9 Q. Did any of them present pathology
10 that related to discrimination?

11 A. That's a very broad question.

12 Q. As you sit here today, do you
13 recollect ever having a discussion with any
14 patient while you were an intern about them
15 claiming discrimination?

16 A. The internship was 30 -- was more
17 than 30 years ago.

18 Q. Fair enough.

19 Are you licensed in psychology in any
20 states?

21 A. Yes.

22 Q. Which states?

23 A. New York, New Hampshire,
24 Massachusetts.

25 Q. Are all those licenses current?

1 G. Frankel, PhD

2 A. Yes.

3 Q. Did you have to take an examination
4 to become licensed in those jurisdictions?

5 A. Yes.

6 Q. When did you take that examination?

7 A. On around 1984.

8 Q. In 1984, you took an examination for
9 New York, Massachusetts and New Hampshire?

10 A. No.

11 Q. So when did you take an examination
12 for New York?

13 A. 1984.

14 Q. And when did you take your
15 examination for Massachusetts?

16 A. There was no exam required. It's the
17 same exam.

18 Q. So you were able to waive into
19 Massachusetts and New Hampshire, having taken the
20 exam for New York?

21 MR. ALTARAS: Objection.

22 A. The exam is a national -- can be used
23 as a national exam. Once it's taken, it's the
24 same exam.

25 Q. I understand.

1 G. Frankel, PhD

2 How did you obtain your license in
3 Massachusetts?

4 A. I applied for it.

5 Q. How did you obtain your license in
6 New Hampshire?

7 A. I applied for it.

8 Q. Have you been suspended in New York,
9 Massachusetts or New Hampshire?

10 A. No.

11 Q. Have you ever been disciplined in New
12 York, Massachusetts or New Hampshire?

13 A. No.

14 Q. Do you hold any Board Certifications?

15 A. No.

16 Q. Do you hold any other degrees?

17 A. I have advanced certification.

18 Q. You have advanced certification in
19 what?

20 A. I have a certificate in
21 psychoanalysis.

22 Q. When did you obtain your certificate
23 of psychoanalysis?

24 A. In the 1990s.

25 Q. Do you recall when?

1 G. Frankel, PhD

2 A. No, not at the moment. Not with
3 specificity.

4 Q. Have you taken any continuing
5 education courses?

6 A. Yes.

7 Q. How often do you take those?

8 A. Fairly regularly.

9 Q. When you say fairly regularly,
10 annually?

11 A. I could be on continuing ed weekly.

12 Q. Are those required by New York,
13 Massachusetts or New Hampshire?

14 A. Yes.

15 Q. Are you current with respect to all
16 your continuing education courses that are
17 required by those jurisdictions?

18 A. Yes.

19 Q. Have you ever been disciplined by the
20 New York State Psychological Association?

21 A. No.

22 Q. Have you ever been disciplined by the
23 American Psychological Association?

24 A. No.

25 Q. What is forensic psychology?

1 G. Frankel, PhD

2 A. Forensic psychology is psychology
3 that relates to the law.

4 Q. I'm sorry. That relates to the law?

5 A. That relates to the law.

6 Q. Do you have any training in forensic
7 psychology?

8 A. That's a broad question.

9 Q. Well, are you able to answer it yes
10 or no?

11 A. I have training, yes.

12 Q. What training do you have in forensic
13 psychology?

14 A. Reading materials.

15 Q. Do you have any Board Certifications
16 in forensic psychology?

17 A. No.

18 Q. What is clinical psychology?

19 A. The area of psychology that relates
20 to patient pathology, direct work with patients
21 and treatment.

22 Q. Do you have a private practice?

23 A. Yes.

24 Q. And what type of practice are you
25 engaged in?

1 G. Frankel, PhD

2 A. I would need -- what do you mean what
3 type of practice?

4 Q. Well, are you engaged in forensic
5 psychology in your practice?

6 A. I provide evaluations.

7 Q. Are you engaged in forensic
8 psychology?

9 A. I am a clinical psychologist.

10 Q. So you engage in clinical psychology
11 in your practice?

12 A. Yes.

13 Q. But not forensic psychology, correct?

14 MR. ALTARAS: Objection.

15 A. I am a clinician.

16 Q. You're not a forensic psychology,
17 correct?

18 A. I do not describe myself as a
19 forensic psychologist.

20 Q. Are you currently employed?

21 A. I am employed.

22 Q. Who do you work for?

23 A. I work for Complete Wellness New York
24 City.

25 Q. What is Complete Wellness New York

1 G. Frankel, PhD

2 City?

3 A. It's a practice that provides
4 different kinds of services to people.

5 Q. What kind of services do they
6 provide?

7 A. I provide positive psychological
8 treatment. They also provide physical therapy and
9 acupuncture and chiropractic and nutritional work
10 for wellness.

11 Q. Do you have an ownership interest in
12 Complete Wellness New York City?

13 A. No.

14 Q. You're a W-2 employee of Complete
15 Wellness New York City?

16 A. Yes.

17 Q. And how long have you been employed
18 by Complete Wellness New York City?

19 A. Going on around two and a half years.

20 Q. In addition to Complete Wellness New
21 York City, do you have your own practice?

22 A. Yes.

23 Q. And is that a practice that's
24 incorporated?

25 A. No.

1 G. Frankel, PhD

2 Q. What's the name of that practice?

3 A. Dr. Gladys Frankel.

4 Q. Do you have an office?

5 A. Virtual.

6 MR. MARKEL: I'm sorry. You're
7 frozen. Can people --

8 MR. ALTARAS: I can actually see
9 everyone else. Keith, we lost your video.
10 Off the record.

11 (Discussion off the record.)

12 MR. MARKEL: Could we read back the
13 last question?

14 (Whereupon, the record was read back
15 by the reporter.)

16 MR. ALTARAS: I think it's better to
17 have the video on because we could see if
18 there's a delay or pause as opposed to seeing
19 the video frozen.

20 Keith, are you there?

21 MR. MARKEL: Can you hear me now?

22 MR. ALTARAS: We heard that.

23 MR. MARKEL: Okay.

24 Q. Dr. Frankel, do you work out of your
25 home?

1 G. Frankel, PhD

2 A. Yes.

3 MR. MARKEL: Ross, can you put on the
4 screen the first exhibit, which is the
5 subpoena?

6 Q. Dr. Frankel, did you receive a
7 subpoena for your testimony today?

8 A. Yes.

9 MR. MARKEL: Ross, are you able to
10 put that on the screen?

11 CONCIERGE TECH: Yes, one moment
12 please.

13 MR. MARKEL: Let's mark as
14 Defendants' Exhibit 1 a subpoena to testify
15 at deposition in a civil action to Gladys
16 Frankel.

17 (Whereupon, Exhibit 1 was marked for
18 identification.)

19 Q. Dr. Frankel, have you seen this
20 document before?

21 A. Yes.

22 Q. Is this a copy of a subpoena that you
23 received?

24 A. Yes.

25 Q. If you look at the subpoena, do you

1 G. Frankel, PhD

2 see that it calls for your deposition today,
3 February 5th, 2021?

4 A. Yes. Yes.

5 Q. Are you appearing today pursuant to
6 this subpoena?

7 A. Yes.

8 Q. I'm sorry. You broke up on me.

9 A. I said yes. You were frozen for the
10 second, too, but you're back.

11 Q. Do you see that the -- there's a
12 section that's marked "Production" on this
13 document?

14 A. Yes.

15 Q. And do you see that it calls for
16 certain records with respect to this case?

17 A. Yes.

18 Q. Did you review this subpoena to see
19 if you had any records that would be responsive to
20 it?

21 A. Yes.

22 Q. And do you have any records that were
23 called for under this subpoena?

24 A. Yes.

25 Q. Do you see that it asks for those to

1 G. Frankel, PhD

2 be produced to us by January 29th, 2021? Do you
3 see that?

4 A. Yes.

5 Q. Have you provided us with any
6 documents as of today?

7 A. I provided them to Daniel Altaras. I
8 was advised from Daniel that they had been
9 transmitted to you.

10 MR. MARKEL: Daniel, we'll call for
11 the production of any documents that
12 Dr. Frankel would have provided to you that
13 are responsive to this subpoena.

14 MR. ALTARAS: We've already sent that
15 along and I believe they are exhibits to this
16 deposition.

17 In any event, follow up in writing
18 and we'll take it under advisement.

19 Q. Dr. Frankel, other than the documents
20 that you provided to Mr. Altaras, are there any
21 documents that you have related to this case or to
22 Ms. Xiang that you haven't produced?

23 A. No.

24 Q. I'm sorry? I didn't hear the answer.

25 A. I said no.

1 G. Frankel, PhD

2 MR. MARKEL: Ross, you can take the
3 exhibit down.

4 Q. Dr. Frankel, have you been retained
5 as an expert witness in this case?

6 A. Yes.

7 MR. MARKEL: Of course today's got to
8 be the day that the internet goes down.

9 Can people hear me or no?

10 MS. D'ANDREA: We can hear you, yes.

11 MR. MARKEL: Ross, I'm not hearing
12 the --

13 MR. ALTARAS: Let's go off the
14 record.

15 (Discussion off the record.)

16 Q. Dr. Frankel, have you been designated
17 as an expert in this case?

18 MR. ALTARAS: Objection.

19 A. I was asked to do an evaluation.

20 Q. Who were you asked to do an
21 evaluation of?

22 A. Vivian Xiang.

23 Q. Have you been designated by Ms. Xiang
24 as an expert in this case?

25 A. No.

1 G. Frankel, PhD

2 Q. Did you provide Ms. Xiang with an
3 expert report in this case?

4 A. No.

5 Q. Did you provide Ms. Xiang with an
6 affidavit in this case?

7 A. No.

8 MR. MARKEL: Ross, can you put on the
9 screen Plaintiff's Expert Witness Disclosure?
10 We'll mark this document as Defendants'
11 Exhibit 2.

12 (Whereupon, Exhibit 2 was marked for
13 identification.)

14 CONCIERGE TECH: The witness has
15 scrolling capabilities now.

16 Q. Dr. Frankel, have you seen this
17 document before?

18 A. No.

19 Q. Did anyone send you this document
20 before you saw it today?

21 A. No.

22 Q. Did you draft this document?

23 A. No.

24 Q. Have you had an opportunity to scroll
25 through this document?

1 G. Frankel, PhD

2 A. Yes.

3 Q. Is it your testimony that you didn't
4 draft this document?

5 A. Correct.

6 Q. Do you know who drafted this
7 document?

8 A. It was signed by Daniel Altaras, but
9 I would need to check with Daniel directly and ask
10 him.

11 Q. Do you see the second page of this
12 document?

13 A. No. I don't have that ability to go
14 to a second page. I'm sorry. I only saw one page
15 and it looked as if it was only one page. Okay.
16 I'm not having scrolling, but I do see the second
17 page.

18 Q. Do you see this is an affidavit of
19 psychologist?

20 A. Yes.

21 Q. Do you recognize this document?

22 A. Yes.

23 Q. Did you draft this document?

24 A. Yes.

25 Q. Do you know when you drafted this

1 G. Frankel, PhD

2 document?

3 A. Yes.

4 Q. What date was that?

5 A. Between June 5th and June 8th.

6 Q. Between June 5th and June 8th, you
7 drafted this document?

8 MR. ALTARAS: Objection.

9 A. Yes.

10 Q. Is there more than one draft of this
11 document?

12 A. No.

13 Q. Were there multiple drafts between
14 June 5th and June 8th of this document?

15 MR. ALTARAS: Objection.

16 A. I have a working -- one document that
17 I work on.

18 Q. Did you save any other drafts of this
19 document?

20 A. No.

21 Q. Did you interview Ms. Xiang on
22 June 5th, 2020?

23 A. Yes.

24 Q. When did you send this report to
25 Mr. Altaras?

1 G. Frankel, PhD

2 A. I would need to recheck the date.

3 Q. Would it have been on June 8th, 2020?

4 A. I would need to check specifically.

5 Q. Did you send emails to Mr. Altaras?

6 A. Yes.

7 Q. Have you produced those emails?

8 A. No.

9 MR. MARKEL: We would call for the
10 production of communications between
11 Dr. Frankel and Mr. Altaras with respect to
12 this case.

13 MR. ALTARAS: Follow up in writing
14 and we'll take it under advisement.

15 Q. Dr. Frankel, can you scroll to page
16 18 of your affidavit?

17 A. I don't have scrolling capacity.

18 MR. MARKEL: Ross, can you help
19 Dr. Frankel scroll through this document?

20 CONCIERGE TECH: Dr. Frankel, do you
21 have a mouse attached to your computer?

22 THE WITNESS: No.

23 CONCIERGE TECH: That makes it more
24 difficult.

25 THE WITNESS: I've got the iPad,

1 G. Frankel, PhD

2 but --

3 CONCIERGE TECH: Without a mouse,
4 it's going to be difficult for her, but I can
5 do it.

6 MR. MARKEL: That would be great.

7 Ross, can you scroll to page 18 of
8 the document?

9 THE WITNESS: I do see page 18,
10 Keith.

11 Q. Okay.

12 Did you draft this page?

13 A. Yes.

14 Q. Does this page reflect your fee for
15 this affidavit?

16 A. Yes.

17 Q. And how much did you charge for this
18 affidavit?

19 A. As stated.

20 Q. And how much was that?

21 A. It says 1,000.

22 Q. And can you provide a breakdown of
23 your fees for the \$1,000 that you charged for this
24 affidavit?

25 A. It's for doing the evaluation report.

1 G. Frankel, PhD

2 Q. Did the \$1,000 include your interview
3 of Ms. Xiang?

4 A. Yes.

5 Q. Did the \$1,000 include reviewing
6 certain documents related to this case?

7 A. Yes.

8 Q. Did the \$1,000 include the drafting
9 of this affidavit?

10 A. Yes.

11 Q. What documents did you review for
12 drafting this affidavit?

13 A. The complaint and her medical reports
14 that were provided.

15 Q. Did you review anything else?

16 A. Yes.

17 Q. Who paid the thousand dollars to you?

18 A. The Derek Smith Law Firm.

19 Q. How long did you interview Ms. Xiang
20 for?

21 A. A few hours.

22 Q. Was that three hours?

23 A. A few hours.

24 Q. Was it more than an hour?

25 A. Yes.

1 G. Frankel, PhD

2 Q. Was it less than two hours?

3 A. More than that.

4 Q. Was it less than three hours?

5 A. I don't recall at the moment.

6 Q. Did you take notes with respect to
7 your interview of Ms. Xiang?

8 A. Yes.

9 Q. Did you produce those to Mr. Altaras?

10 A. My notes are the report.

11 Q. Did you take handwritten notes?

12 A. No.

13 Q. So when you interviewed Ms. Xiang,
14 you were typing?

15 A. Yes.

16 Q. And you typed your notes directly
17 into this report?

18 A. I typed her responses directly into
19 the report.

20 Q. Did you record your interview of
21 Ms. Xiang?

22 A. No.

23 Q. Did you videotape your interview of
24 Ms. Xiang?

25 A. No.

1 G. Frankel, PhD

2 Q. Was anyone else present during your
3 interview of Ms. Xiang?

4 A. No.

5 Q. Did your interview with Ms. Xiang
6 last longer than three hours?

7 A. I'd have to look back at my calendar.

8 Q. Would your calendar reflect how long
9 your interview with Ms. Xiang lasted?

10 A. It might not.

11 Q. What do you mean by that?

12 A. I might not have written down, you
13 know, three hours and 14 minutes, for example.

14 MR. MARKEL: We would ask that Dr.
15 Frankel's calendar be produced with respect
16 to any reference to the length of time she
17 interviewed Ms. Xiang.

18 MR. ALTARAS: Follow up in writing.
19 We'll take it under advisement.

20 Q. Dr. Frankel, you mentioned that you
21 reviewed medical reports.

22 Do you recall what those reports
23 were?

24 A. It is referenced in the report.

25 Q. Are those the psychotherapy notes

1 G. Frankel, PhD

2 from Dr. Jason?

3 A. Yes.

4 Q. Did you speak to Dr. Jason?

5 A. No.

6 Q. Did you email with Dr. Jason?

7 A. No.

8 MR. MARKE: Ross, we can take down
9 Defendants' Exhibit 2 for the moment.

10 If we could put up the psychotherapy
11 notes and mark them as Defendants' Exhibit 3
12 -- actually, Ross I don't need that exhibit
13 just yet. Let's just hold off.

14 Q. Dr. Frankel, how many times have you
15 spoken with Ms. Xiang?

16 A. I spoke with her during the
17 interview.

18 Q. Have you spoken to her since the
19 interview?

20 A. I have not spoken to her, no.

21 Q. So since June 5th, 2020, you haven't
22 spoken to Ms. Xiang, correct?

23 A. Correct.

24 Q. Prior to June 5th, 2020 had you
25 spoken to Ms. Xiang?

1 G. Frankel, PhD

2 A. No.

3 Q. Did you ever meet with Ms. Xiang in
4 person?

5 A. No.

6 Q. Was your meeting with Ms. Xiang
7 virtual?

8 A. Yes. I mean -- and there was
9 communication to confirm the appointment.

10 Q. How was that communication --

11 A. What? I'm sorry.

12 Q. Sorry. Finish your answer.

13 A. I was saying I didn't hear your
14 question.

15 Q. How did you communicate with
16 Ms. Xiang?

17 A. By email.

18 Q. And that was strictly to set up the
19 appointment for June 5th?

20 A. Yes.

21 Q. And do you recall how many
22 communications you had with Ms. Xiang about
23 setting up that appointment?

24 A. No, I do not recall.

25 Q. Did you ask Ms. Xiang to provide you

1 G. Frankel, PhD

2 with certain information?

3 A. No.

4 Q. Did you ask Ms. Xiang to provide you
5 with certain documents prior to your interview of
6 her?

7 A. No.

8 Q. Do you recall how many emails you had
9 with Ms. Xiang?

10 MR. ALTARAS: Objection.

11 A. No.

12 MR. MARKEL: We would call for the
13 production of any emails between Ms. Xiang
14 and Dr. Frankel.

15 MR. ALTARAS: Follow up in writing.
16 We'll take it under advisement.

17 Q. Have you discussed with Ms. Xiang
18 that you're testifying today?

19 A. No.

20 Q. Did you talk to Mr. Altaras before
21 today's deposition?

22 A. Yes.

23 Q. When did you speak to Mr. Altaras?

24 A. During the week.

25 Q. What day during the week?

1 G. Frankel, PhD

2 A. I don't recall specifically.

3 Q. How long did you speak to Mr. Altaras
4 for?

5 A. Just a few minutes.

6 Q. Did Mr. Altaras provide you with any
7 documents?

8 A. No.

9 Q. Did Mr. Altaras discuss with you any
10 testimony of any deposition in this case?

11 A. No.

12 Q. Did Mr. Altaras discuss any
13 communications he had with Ms. Xiang?

14 A. No.

15 Q. Did Mr. Altaras discuss with you
16 Ms. Xiang's deposition?

17 A. No.

18 Q. Did you review any deposition
19 transcripts in this case?

20 A. No.

21 Q. Have you reviewed any documents prior
22 to your deposition today?

23 A. Just the subpoena.

24 Q. Did you review your affidavit?

25 A. Yes.

1 G. Frankel, PhD

2 Q. When did you review your affidavit?

3 A. Last night.

4 Q. Did you review any other documents?

5 A. The affidavit.

6 Q. Did you review the amended complaint
7 in this case?

8 A. No.

9 Q. Did you review the medical records
10 from Dr. Jason?

11 A. I reviewed them in preparation for
12 the report.

13 Q. Did you review them in preparation of
14 today's deposition?

15 A. As they were in my report.

16 Q. Did you review the notes of Dr. Jason
17 in preparation for today's deposition?

18 MR. ALTARAS: Objection.

19 A. As I said, I reviewed them as they
20 were integrated in my report.

21 MR. MARKEL: Ross, can we pull up
22 Defendants' Exhibit 3, which are the
23 psychotherapy intake notes of Dr. Jason?

24 (Whereupon, Exhibit 3 was marked for
25 identification.)

1 G. Frankel, PhD

2 Q. Dr. Frankel, do you recognize this
3 document?

4 A. Yes. It looks like the documents.

5 Q. Do you know who Dr. Jason is?

6 A. She says that she's a clinical
7 psychologist.

8 Q. How did you first learn of Dr. Jason?

9 A. From looking at these notes.

10 Q. Have you ever emailed with Dr. Jason?

11 A. No.

12 Q. Have you ever texted with Dr. Jason?

13 A. No.

14 Q. Have you ever spoken to Dr. Jason
15 over the phone?

16 A. No.

17 Q. How did you obtain these notes?

18 A. They were sent to me from the Derek
19 Smith Law Firm.

20 Q. And how were they sent to you?

21 A. By email.

22 MR. MARKEL: We call for the
23 production of any email communications
24 between Dr. Frankel and the Derek Smith Law
25 Group with respect to plaintiff or this case.

1 G. Frankel, PhD

2 MR. ALTARAS: Follow up in writing.

3 We'll take it under advisement.

4 Q. When did you obtain these --
5 withdrawn.

6 When did you obtain the medical
7 records from Dr. Jason?

8 MR. ALTARAS: Objection.

9 You can answer.

10 A. On or around the preparation time for
11 this interview.

12 Q. Did you receive these psychotherapy
13 notes before or after your interview of Ms. Xiang?

14 A. I would need to look at the date on
15 that email.

16 Q. As you sit here today, do you recall
17 whether or not you received them before or after
18 you interviewed Ms. Xiang?

19 A. I do not recall.

20 Q. If you look at the page that's on the
21 screen, can you see the date on which Dr. Jason
22 met with Ms. Xiang was August 9th, 2018 between
23 6:00 p.m. and 6:45 p.m.?

24 A. Yes.

25 Q. Do you know whether or not this was

1 G. Frankel, PhD

2 the first time Dr. Jason met with Ms. Xiang?

3 A. I could not tell you if that was the
4 first time that she met with her or not.

5 Q. Did you ask Ms. Xiang how many times
6 she met with Dr. Jason?

7 A. I did ask Ms. Xiang questions about
8 her treatment.

9 Q. Did you ask her how many times she
10 met with Dr. Jason?

11 A. Yes, I did.

12 Q. And how many times did she meet with
13 Dr. Jason?

14 A. We did not speak in terms of a
15 specific number. Her comment was "has seen her
16 several times beginning August 9th, 2018."

17 Q. Did you corroborate how many times
18 she saw Dr. Jason?

19 A. Ms. Xiang reported she saw her
20 several times.

21 Q. Is several times 100 times?

22 MR. ALTARAS: Objection.

23 MR. MARKEL: You can answer.

24 A. It depends upon the person who is
25 responding.

1 G. Frankel, PhD

2 Q. Well, what do you consider several
3 times?

4 MR. ALTARAS: Objection.

5 A. More than twice.

6 Q. More than twice is several times?

7 MR. ALTARAS: Objection.

8 A. Yes.

9 Q. So if someone saw -- so if Ms. Xiang
10 saw Dr. Jason three times, that would be several
11 times?

12 MR. ALTARAS: Objection.

13 A. Yes.

14 Q. If Ms. Xiang saw Dr. Jason three
15 times over the course of three years, would that
16 be several times?

17 MR. ALTARAS: Objection.

18 A. It could be.

19 Q. If you take a look at the document,
20 do you see that Dr. Jason refers to a presenting
21 problem?

22 A. Yes.

23 Q. Do you see that she refers to coping
24 with familial stressors regarding finances? Do
25 you see that?

1 G. Frankel, PhD

2 A. Yes.

3 Q. Did you ask Ms. Xiang about her
4 familial stressors?

5 A. She referenced that.

6 Q. What did she tell you?

7 A. She's worried if she doesn't have a
8 job, she doesn't have income.

9 Q. What did she tell you about her
10 familial stressors?

11 A. As I said, she doesn't have a job.

12 Q. Do you know that Ms. Xiang is
13 currently employed?

14 A. I do not have that information.

15 Q. Do you know that Ms. Xiang was
16 employed as of December 2018?

17 A. I do not have that specific
18 information.

19 Q. Do you know that Ms. Xiang was
20 employed as of June 5th, 2020 when you interviewed
21 her?

22 MR. ALTARAS: Objection.

23 A. I would need to go and look at that.

24 Q. What would you need to look at?

25 A. If there are -- in some cases, we

1 G. Frankel, PhD

2 talk about how the effects of a prior work
3 experience impact a current work experience.

4 Q. My question to you is Ms. Xiang,
5 whether or not she was employed when you
6 interviewed her?

7 A. No.

8 Q. Wouldn't that have been relevant to
9 you?

10 A. No.

11 Q. Why not?

12 A. Well, I want to focus on her
13 emotional experiences at the moment.

14 Q. As of June 5th, 2020?

15 A. Yes.

16 Q. So what were her familial stressors
17 as of June 5th, 2020?

18 A. That's a word that Dr. Jason used.

19 Q. I'm asking you did you ask Ms. Xiang
20 what her familial stressors were as of June 5th,
21 2020?

22 A. She spoke about her experiences of
23 not being employed, not -- her worries about being
24 able to provide income.

25 Q. So would it surprise you to know as

1 G. Frankel, PhD

2 of June 5th, 2020 that Ms. Xiang was actually
3 employed?

4 MR. ALTARAS: Objection.

5 A. She could be employed as someone with
6 very little income.

7 Q. Do you know that Ms. Xiang was
8 employed in a role that paid her approximately
9 \$10,000 more than she made at Market America?

10 MR. ALTARAS: Objection.

11 A. I do not have income information.

12 Q. Did you ask Ms. Xiang whether or not
13 she made more money at her new job than her job
14 when she was employed at Market America?

15 A. No.

16 Q. Did you ask Ms. Xiang about her
17 finances?

18 A. She reported she was concerned about
19 being able to provide for herself, her family, her
20 baby.

21 Q. Did you do anything to independently
22 corroborate whether or not that was a true
23 statement?

24 MR. ALTARAS: Objection.

25 A. No.

1 G. Frankel, PhD

2 Q. Did you ask Ms. Xiang whether or not
3 she received income from any other sources other
4 than her job?

5 A. No.

6 Q. Did you ask Ms. Xiang whether or not
7 she owned any properties?

8 A. No.

9 Q. Did you ask Ms. Xiang whether or not
10 she had any brokerage accounts?

11 A. No.

12 Q. Did you review Ms. Xiang's tax
13 returns?

14 A. No.

15 Q. Did you ask Ms. Xiang for her tax
16 returns?

17 A. No.

18 Q. Do you see in the "Presenting
19 Problem" statement that Dr. Jason made refers to
20 Ms. Xiang being angry?

21 A. Yes.

22 Q. Did you probe Ms. Xiang as to why she
23 was angry?

24 A. Yes.

25 Q. And what did she say?

1 G. Frankel, PhD

2 A. Well, Ms. Xiang reported that she was
3 angry.

4 Q. Did you ask her why she was angry?

5 A. Ms. Xiang talks about being angry
6 about being let go.

7 Q. Was Ms. Xiang angry about being let
8 go on June 5th, 2020?

9 A. Yes.

10 Q. What did Ms. Xiang say?

11 A. Ms. Xiang talked about being pregnant
12 and being let go.

13 Q. Was Ms. Xiang pregnant on June 5th,
14 2020?

15 A. Not that -- I am not aware if she was
16 pregnant on June 5th.

17 Q. Do you know when Ms. Xiang was let
18 go?

19 A. Yes.

20 Q. When was that?

21 A. As per information I received,
22 Ms. Xiang reported she was wrongfully terminated
23 July 24th, 2018.

24 Q. Did you meet with Ms. Xiang after she
25 was terminated and prior to June 5th, 2020?

1 G. Frankel, PhD

2 A. No.

3 Q. So you don't know how Ms. Xiang was
4 feeling from July 24th, 2018 until June 5th, 2020,
5 correct?

6 MR. ALTARAS: Objection.

7 A. I did not have contact with her in
8 that time period.

9 MR. MARKEL: Court reporter, can you
10 read back my question?

11 (Whereupon, the record was read back
12 by the reporter.)

13 A. I have her report on her experiences.

14 Q. You're referring to Dr. Jason's
15 report, correct?

16 A. There's Dr. Jason's report and
17 Ms. Xiang's commentary.

18 Q. I'm sorry? Say again.

19 A. Ms. Xiang's reporting to me how she
20 felt.

21 Q. Reporting to you how she felt on
22 June 5th, 2020, correct?

23 A. Correct.

24 Q. You don't know how Ms. Xiang was
25 feeling from July 24th, 2018 to June 5th, 2020

1 G. Frankel, PhD

2 independently on your own, correct?

3 MR. ALTARAS: Objection.

4 A. I did not have contact with her
5 between July 24th and June 5th.

6 Q. And you didn't speak to Dr. Jason
7 during that period either, correct?

8 A. Correct.

9 Q. So your only understanding of how
10 Ms. Xiang was feeling during that period is from
11 these notes of Dr. Jason and from her -- and from
12 your interview of Ms. Xiang on June 5th, 2020,
13 correct?

14 A. Correct.

15 Q. If you see down at the bottom of this
16 page, do you see that Dr. Jason declared this
17 information to be accurate and complete on
18 February 19th, 2019? Do you see that?

19 A. Yes.

20 Q. Do you know why it took Dr. Jason
21 over five months to sign and declare her notes
22 were accurate?

23 MR. ALTARAS: Objection.

24 A. No.

25 Q. Do you take notes with respect to

1 G. Frankel, PhD

2 your patients?

3 A. Yes.

4 Q. Do you confirm the accuracy of those
5 notes after your session with a patient?

6 A. I don't know what you mean by confirm
7 the accuracy.

8 Q. Well, do you do what Dr. Jason did
9 with respect to her notes?

10 MR. ALTARAS: Objection.

11 You can answer if you understand the
12 question.

13 A. I don't do a note like that note.

14 Q. Do you take handwritten notes when
15 you see a patient?

16 A. Yes.

17 Q. Do you take handwritten notes every
18 time you see a patient?

19 A. No.

20 Q. Do you take what's called process
21 notes?

22 MR. ALTARAS: Objection.

23 A. Yes.

24 Q. What are process notes?

25 A. They can be referred as to notes that

1 G. Frankel, PhD

2 are taken during the session.

3 Q. Did you ask Dr. Jason for her process
4 notes?

5 A. No.

6 Q. Did you ask Ms. Xiang to provide you
7 with Dr. Jason's process notes?

8 A. No.

9 Q. Did you ask Mr. Altaras to provide
10 you with Dr. Jason's process notes?

11 A. No.

12 Q. Why not?

13 A. Usually, process notes are the
14 therapist's personal notes and not provided
15 outside. They're protected notes.

16 Q. Is it your position that if Ms. Xiang
17 asked for her therapist's process notes that she
18 wouldn't be able to obtain them?

19 MR. ALTARAS: Objection.

20 A. I couldn't -- it is not usually asked
21 for process notes.

22 MR. MARKEL: Can you read back my
23 question?

24 (Whereupon, the record was read back
25 by the reporter.)

1 G. Frankel, PhD

2 A. I couldn't comment on predictive
3 questions.

4 Q. If a patient of yours asks for your
5 process notes, would you hand them to her or him?

6 MR. ALTARAS: Objection.

7 A. It's not a yes or no answer.

8 Q. Well, can you explain?

9 A. It would be first -- when notes are
10 asked for as the formal progress notes, there's a
11 process to assess whether it is in the patient's
12 psychological appropriateness to receive the
13 progress notes.

14 Q. So you wouldn't provide the process
15 notes to a patient unless they were medically
16 sound to receive those process notes?

17 A. Usually, the information that is
18 relevant is in the psychotherapy notes that are
19 shared.

20 Q. Would you provide your process notes,
21 if requested, to another medical professional?

22 A. The relevant clinical information
23 would be available in the progress notes that were
24 shared.

25 Q. That's not my question, Dr. Frankel.

1 G. Frankel, PhD

2 My question is would you provide your
3 process notes if requested by another medical
4 professional?

5 MR. ALTARAS: Objection.

6 A. It would be assessed case by case.

7 Q. If the patient asked you to provide
8 your process notes to another medical
9 professional, would you do it?

10 MR. ALTARAS: Objection.

11 A. It would be assessed case by case and
12 by relevance.

13 Q. Is there --

14 A. If the information needed to be
15 shared, it would have already been shared with
16 another medical professional.

17 Q. How would that information already
18 have been shared?

19 MR. ALTARAS: Objection.

20 A. Through the regular progress note or
21 communication.

22 Q. The process notes are different from
23 the progress notes, correct?

24 A. Yes.

25 Q. And my question to you is if a

1 G. Frankel, PhD

2 patient asked you for your process notes or
3 directed you to send your process notes to another
4 medical provider, would you do it?

5 A. It would be assessed case by case.

6 Q. Is there a basis for you under the
7 law not to provide your process notes?

8 MR. ALTARAS: Objection.

9 A. The law can provide for protection of
10 those process notes.

11 Q. Under what circumstances?

12 MR. ALTARAS: Objection.

13 A. There's case law about that that is
14 beyond referencing at the moment.

15 Q. You never asked Ms. Xiang to obtain
16 Dr. Jason's process notes, correct?

17 A. No.

18 Q. And you never called Dr. Jason to ask
19 for her process notes, correct?

20 A. Correct.

21 MR. MARKEL: Ross, can we go to the
22 next page of that document?

23 Q. Dr. Frankel, do you recognize this
24 page?

25 A. It looks like it would be another

1 G. Frankel, PhD

2 note in the process.

3 Q. And do you see that this note is
4 dated August 22nd, 2018, from 6:00 to 6:45 p.m.?

5 A. Yes.

6 Q. And is that approximately 13 days
7 after the intake note that was dated August 9th,
8 2018?

9 A. That's an appropriate subtraction.

10 Q. Is this Ms. Xiang's second visit with
11 Dr. Jason?

12 A. I can't comment on second, but it is
13 the second report that's provided.

14 Q. And you haven't been provided with
15 any other notes than the notes that Ms. Xiang or
16 Mr. Altaras provided you in this case, correct?

17 A. Correct.

18 Q. Do you see that there's a diagnosis
19 on this page?

20 A. I just want to comment that I am
21 trusting that you took the second note in the
22 series that you were provided.

23 Q. I'll state for the record that the
24 notes that I'm providing you are in sequential
25 order from the first date to the last date as

1 G. Frankel, PhD

2 provided by Mr. Altaras and plaintiff in this
3 case.

4 A. Thank you.

5 I do see the diagnosis noted.

6 Q. What is that diagnosis?

7 A. It says F41.1, Generalized Anxiety
8 Disorder.

9 Q. What does that mean?

10 A. It means that the person is
11 experiencing anxiety.

12 Q. Did you ask Ms. Xiang about her
13 anxiety?

14 A. Yes.

15 Q. What did you ask her?

16 A. It would be hard to recall the exact
17 question.

18 Q. Do you have a list of questions that
19 you ask patients?

20 A. I have a running list in my head.

21 Q. Do you recall what questions you
22 asked Ms. Xiang about her anxiety?

23 A. No.

24 Q. If you see -- if you scroll down, do
25 you see the "Symptom Description and Subjective

1 G. Frankel, PhD

2 Report"?

3 A. I don't have the ability to scroll.

4 Q. It's right on the screen.

5 A. Wait. I'm sorry. Where?

6 Q. Where it says "Symptom Description
7 and Subjective Report."

8 Do you see that?

9 A. Yes.

10 Q. Do you see there's a quote there that
11 says "Trying to think more positively"?

12 A. Yes.

13 Q. Is that a quote of Ms. Xiang?

14 A. One can consider that that is
15 reflecting a quote of Ms. Xiang's.

16 Q. Did you ask Ms. Xiang what she meant
17 by that?

18 A. No.

19 Q. Did you ask Dr. Jason what was meant
20 by that statement?

21 A. No.

22 Q. Do you see in the "Relevant Content"
23 section it says "Likely to move forward with her
24 case"? Do you see that?

25 A. Yes.

1 G. Frankel, PhD

2 Thank you for the larger font.

3 Q. Did she talk to you about the merits
4 of her case?

5 A. No.

6 Q. Did you ask her whether or not she
7 was considering not to move forward with her case?

8 A. No.

9 Q. Did she talk to you about any
10 ambivalence about moving forward with her case?

11 A. No.

12 Q. Did she talk to you about the merits
13 of her case?

14 MR. ALTARAS: Objection.

15 A. No.

16 Q. Did she talk to you about why she was
17 bringing a case against her former employer,
18 Market America?

19 MR. ALTARAS: Objection.

20 A. No.

21 Q. Do you see in that same section
22 Dr. Jason writes "Only gained 15 to 18 pounds so
23 far"? Do you see that?

24 A. Yes.

25 Q. Did you talk to Ms. Xiang about how

1 G. Frankel, PhD

2 much weight she had gained during her pregnancy?

3 A. She made references to that.

4 Q. What did Ms. Xiang tell you?

5 A. She said she did not gain much
6 weight.

7 Q. Did you ask her how much weight she
8 gained during her pregnancy?

9 A. No.

10 Q. Did you know that Ms. Xiang had
11 another child?

12 A. I don't recall at the moment.

13 Q. Do you know that Ms. Xiang has two
14 children?

15 A. I believe -- that sounds familiar.

16 Q. Do you know the names of Ms. Xiang's
17 children?

18 A. No.

19 Q. Do you know the ages of Ms. Xiang's
20 children?

21 A. Not offhand.

22 Q. Did you discuss with Ms. Xiang her
23 first pregnancy?

24 A. No.

25 Q. Did you discuss with Ms. Xiang that

1 G. Frankel, PhD

2 she was pregnant with her first child in 2016?

3 A. No.

4 Q. Did Ms. Xiang inform you that she was
5 employed at Market America when she had her first
6 child in 2016?

7 A. I don't recall.

8 Q. Did Ms. Xiang discuss with you that
9 she was provided with maternity leave by Market
10 America with respect to her first child in 2016?

11 A. No.

12 Q. Did you ask Ms. Xiang how much weight
13 she had gained during her first pregnancy?

14 A. No.

15 Q. Did you ask Ms. Xiang how much weight
16 she had gained at the same point in her first
17 pregnancy as her second pregnancy?

18 A. No.

19 Q. Do you see the next sentence says
20 "Support positive self-regard and self-care"?

21 A. Yes.

22 Q. Do you know what that refers to?

23 A. I consider it suggests that Dr. Jason
24 was having discussions about self-regard and
25 self-care and trying to reinforce that with her

1 G. Frankel, PhD

2 patient.

3 Q. Did you discuss that with Ms. Xiang
4 during your interview?

5 A. No.

6 Q. Did you ever speak with Ms. Xiang's
7 primary care physician?

8 A. No.

9 Q. Did you ever speak with Ms. Xiang's
10 gynecologist?

11 A. No.

12 Q. Did you ever speak with Ms. Xiang's
13 children's pediatrician?

14 A. No.

15 Q. Do you see down at the bottom of this
16 document it refers to "Prescribed frequency of
17 treatment"?

18 A. Yes.

19 Q. And do you see it says weekly?

20 A. Yes.

21 Q. Do you know whether Ms. Xiang saw
22 Dr. Jason weekly?

23 A. That would be represented in the
24 progress notes.

25 Q. Are these the progress notes that

1 G. Frankel, PhD

2 we're looking at?

3 A. That's how they're represented.

4 Q. And do you see it says under "Plan,"
5 it says "See next week"?

6 A. Yes.

7 Q. Does that refer to Dr. Jason seeing
8 Ms. Xiang in a week?

9 A. That's what it's referring to.

10 MR. MARKEL: Can we go to the next
11 page of this document, Ross?

12 Q. Dr. Frankel, do you see this page is
13 dated September 12th, 2018 from 4:30 to 5:15 p.m.?
14 Do you see that?

15 A. Yes.

16 Q. And that's approximately 20 days
17 after the last progress note of the session
18 Dr. Jason had with Ms. Xiang on August 22nd, 2018,
19 correct?

20 A. Yes.

21 Q. And do you see the diagnosis on that
22 page again says Generalized Anxiety Disorder?

23 A. Yes.

24 Q. Do you see under the "Symptom
25 Description and Subjective Report," it says

1 G. Frankel, PhD

2 "Anxious over discrimination case"?

3 A. Yes.

4 Q. Did you ask Ms. Xiang about this
5 statement?

6 A. No.

7 Q. Did you ask Ms. Xiang what made her
8 anxious over the discrimination case?

9 A. I did not -- I think you're
10 assuming -- no, I didn't.

11 Q. Did you ask Ms. Xiang any questions
12 whatsoever about the notes you received of
13 Dr. Jason?

14 A. No.

15 Q. If you see in the "Relevant Content"
16 section, do you see there it says "Lawyer just
17 submitted claim regarding discrimination"?

18 A. Yes.

19 Q. Did you discuss with Ms. Xiang what
20 that meant?

21 A. No.

22 Q. Do you see the next sentence says
23 "Stressors at home as well"?

24 A. Yes.

25 Q. Did you ask Ms. Xiang what those

1 G. Frankel, PhD

2 stresses were?

3 A. No.

4 Q. Why not?

5 A. You are assuming I had these in front
6 of me when I interviewed her.

7 Q. Is it your position today under oath
8 in your deposition that you didn't have these
9 notes when you interviewed Ms. Xiang?

10 MR. ALTARAS: Objection.

11 A. I did not have them -- I would have
12 to look at the exact date. I did not have them
13 open and referring to them as I interviewed the
14 client.

15 Q. Wouldn't it have been important to
16 discuss these notes with Ms. Xiang directly?

17 MR. ALTARAS: Objection.

18 A. I would have to look back at the date
19 that I had those notes.

20 Q. Wouldn't it have been important for
21 you to have corroborated whether or not these
22 statements were true and accurate?

23 MR. ALTARAS: Objection.

24 A. What a provider writes in provider
25 notes are --

1 G. Frankel, PhD

2 MR. MARKEL: Court reporter, could
3 you read back my question?

4 (Whereupon, the record was read back
5 by the reporter.)

6 A. Yes.

7 Q. Wouldn't it have been important for
8 you to know whether or not there were independent
9 stressors that Ms. Xiang was experiencing for
10 purposes of your examination of Ms. Xiang?

11 MR. ALTARAS: Objection.

12 You can answer if you understand the
13 question.

14 A. Yes.

15 Q. Do you see the sentence says after
16 "Stresses at home as well, daughter just bit
17 someone in day care again"?

18 A. Yes.

19 Q. Do you see that?

20 A. Yes.

21 Q. Did you discuss with Ms. Xiang what
22 her -- withdrawn.

23 Did you discuss with Ms. Xiang her
24 daughter biting other children in day care?

25 A. No.

1 G. Frankel, PhD

2 Q. Did you discuss with Ms. Xiang
3 whether or not she was anxious about her daughter
4 biting another child in day care?

5 A. No.

6 Q. Did you discuss with Ms. Xiang
7 whether or not she was distressed about her
8 daughter biting another child in day care?

9 A. No.

10 Q. Do you see the next sentence says
11 "Concerned about the future with the baby and her
12 daughter"?

13 A. Yes.

14 Q. Did you discuss with Ms. Xiang about
15 the future of her baby's safety with her daughter?

16 A. No.

17 Q. Did you discuss whether or not
18 Ms. Xiang was anxious about that circumstance?

19 A. No.

20 Q. Did you discuss with Ms. Xiang
21 whether or not she was distressed about that
22 circumstance?

23 A. No.

24 Q. Do you see also in that same
25 "Relevant Content" section that it refers to a

1 G. Frankel, PhD

2 "conflict with her mother who lives with them"?

3 A. Yes.

4 Q. Did you explore with Ms. Xiang any
5 conflicts she was having with her mother?

6 A. No.

7 Q. Did you explore any conflicts that
8 Ms. Xiang was having with her mother-in-law?

9 A. No.

10 Q. Did you explore any conflicts that
11 Ms. Xiang was having with her husband?

12 A. No.

13 Q. Do you see the next sentence reads
14 "Possible employment alternatives explored"?

15 A. Yes.

16 Q. Does that suggest as of
17 September 12th, 2018 Ms. Xiang is looking for
18 alternative employment?

19 A. It would be hard to know exactly what
20 that statement means.

21 Q. Did you ask Ms. Xiang whether or not
22 she looked for a new job after she left Market
23 America?

24 A. I don't recall.

25 Q. Did you ask her whether or not she

1 G. Frankel, PhD
2 had any trouble finding a new job after she left
3 Market America?

4 A. I might have.

5 Q. What did you ask her?

6 A. I couldn't repeat exactly what I
7 asked her.

8 Q. What did she say to you?

9 A. I would have written down what she
10 had said to me.

11 Q. Where would you have written it?

12 A. In the report.

13 Q. In your typed report?

14 A. Yes.

15 Q. Did you reference in your typed
16 report that Ms. Xiang obtained new employment as
17 of December 2018?

18 A. No.

19 Q. Why not?

20 A. We may not have spoken about it.

21 Q. Does that refresh your recollection
22 then that you didn't ask Ms. Xiang whether or not
23 she obtained new employment?

24 MR. ALTARAS: Objection.

25 A. I do not see a statement regarding

1 G. Frankel, PhD

2 employment.

3 Q. Does that refresh your recollection
4 that you didn't ask Ms. Xiang whether or not she
5 had obtained new employment?

6 MR. ALTARAS: Objection.

7 A. I don't recall the specific
8 questioning.

9 Q. Well, did you intentionally leave the
10 fact that Ms. Xiang had obtained new employment as
11 of December 2018 out of your affidavit?

12 A. No.

13 Q. So is it fair to say that you didn't
14 ask Ms. Xiang whether or not she was employed when
15 you interviewed her on June 5th, 2020?

16 A. I may not have.

17 MR. MARKEL: Okay.

18 Let's go to the next page, Ross.

19 Q. Dr. Frankel, do you see that these
20 are progress notes of Dr. Jason that are dated
21 November 30th, 2018 from 4:30 to 5:15 p.m.?

22 A. Yes.

23 Q. Do you know whether or not Ms. Xiang
24 had given birth between September 12th, 2018, the
25 last time she saw Dr. Jason, and November 30th,

1 G. Frankel, PhD

2 2018?

3 MR. ALTARAS: Objection.

4 A. I didn't have the birth date.

5 Q. But this document reflects that
6 Ms. Xiang saw Dr. Jason approximately two months
7 after she saw Dr. Jason on September 12th, 2018,
8 correct?

9 A. Yes.

10 Q. Is the diagnosis on this document the
11 same?

12 A. The font or that section of the date
13 is blocking my ability to see the rest of the
14 progress note.

15 Okay. It does still say Generalized
16 Anxiety Disorder.

17 Q. So nothing with respect to Dr.
18 Jason's diagnosis had changed, correct?

19 MR. ALTARAS: Objection.

20 A. That is the diagnosis she used.

21 Q. In the "Symptom Description and
22 Subjective Report" section, it says "Stressed,"
23 correct?

24 A. Yes.

25 Q. Did you ask Ms. Xiang why she was

1 G. Frankel, PhD

2 stressed as of November 30th, 2018?

3 A. No.

4 Q. Do you see in the "Relevant Content"
5 section it says "Dealing with two kids is
6 difficult"?

7 A. Yes.

8 Q. Did you address with Ms. Xiang why
9 she felt dealing with two kids was difficult?

10 A. No.

11 Q. Did you discuss with Ms. Xiang her
12 ability to cope with having two children?

13 A. No.

14 Q. Did you discuss with Ms. Xiang
15 whether or not she liked being a mother?

16 A. No.

17 Q. Did you discuss with Ms. Xiang
18 whether or not she suffered from postpartum?

19 A. No.

20 Q. Did you speak with any of Ms. Xiang's
21 medical providers about whether or not she
22 suffered from postpartum?

23 A. No.

24 Q. Did you ask Ms. Xiang to provide you
25 with any medical records other than the

1 G. Frankel, PhD

2 psychotherapy records you received from Dr. Jason?

3 A. No.

4 Q. Does the "Relevant Content" section
5 also refer to Ms. Xiang's mother-in-law being in
6 her home?

7 A. It does say mother-in-law is also
8 here.

9 Q. Did you explore with Ms. Xiang
10 whether or not having her mother-in-law in her
11 home created anxiety for her?

12 A. No.

13 Q. Did you discuss with Ms. Xiang
14 whether or not having her mother-in-law in her
15 home caused her to feel distressed?

16 A. No.

17 Q. Do you see in these notes it says
18 that Ms. Xiang "feels like she cries too much"?

19 A. Yes.

20 Q. Did you ask Ms. Xiang why she cried
21 too much?

22 MR. ALTARAS: Objection.

23 A. No.

24 Q. Did you ask Ms. Xiang what was the
25 cause of making her cry?

1 G. Frankel, PhD

2 A. No.

3 MR. ALTARAS: Objection.

4 A. No.

5 Q. Do you see in these notes that it
6 refers to Ms. Xiang "focused on sending out a few
7 résumés at a time in order to be able to better
8 manage and focus on future prospects"?

9 A. Yes.

10 Q. Did you discuss with Ms. Xiang her
11 future prospects?

12 A. No.

13 Q. Do you see towards the bottom of that
14 page the "Prescribed Frequency of Treatment," do
15 you see that it now says "As needed"?

16 A. Yes.

17 Q. Do you know why Dr. Jason changed her
18 progress notes from weekly treatment to as needed
19 treatment?

20 A. No.

21 Q. Does that suggest that Dr. Jason
22 didn't believe that Ms. Xiang needed to be treated
23 on a weekly basis?

24 A. It could also suggest that because
25 there's a baby at home that she has difficulty

1 G. Frankel, PhD

2 coming weekly.

3 Q. Do you know whether or not Ms. Xiang
4 had her mother living with her at the time that
5 she gave birth to her child?

6 MR. ALTARAS: Objection.

7 A. I could not comment on that.

8 Q. Do you know whether or not her
9 mother-in-law was also living in her home at this
10 time?

11 A. I could not comment on that.

12 Q. Did you ask whether or not Ms. Xiang
13 had child care?

14 A. No.

15 Q. So you don't know as you sit here
16 today whether or not Dr. Jason believed that
17 Ms. Xiang didn't need to seek psychotherapy on a
18 weekly basis?

19 A. I do not know what was behind
20 Dr. Jason's thinking when she wrote that.

21 Q. And you never asked Dr. Jason,
22 correct?

23 A. Correct.

24 MR. MARKEL: Ross, if we can turn to
25 the next page.

1 G. Frankel, PhD

2 Q. Dr. Frankel, this page refers to
3 psychotherapy notes of Dr. Jason dated
4 December 19, 2018.

5 A. Yes.

6 Q. Approximately 20 days after
7 Ms. Xiang's last session with Dr. Jason on
8 November 30th, 2018.

9 Do you see that?

10 A. Yes.

11 Q. Do you see the diagnosis?

12 A. Yes.

13 Q. And has that diagnosis changed?

14 A. No, it hasn't.

15 Q. And do you see in the "Symptom
16 Description and Subjective Report" section that it
17 says "A bit more at ease"?

18 A. Yes.

19 Q. Did you explore with Ms. Xiang what
20 is meant by this statement?

21 A. No.

22 Q. Did you explore with Ms. Xiang that
23 as of December 19, 2018 she was feeling more at
24 ease?

25 A. No.

1 G. Frankel, PhD

2 Q. Did you see in the "Relevant Content"
3 section, it says "Currently working as a
4 freelancer"?

5 A. Yes.

6 Q. Did you discuss that with Ms. Xiang?

7 A. No.

8 Q. Did you discuss with Ms. Xiang that
9 she had found new employment?

10 A. I don't recall.

11 Q. As you sit here today and review this
12 document, is it your understanding that as of
13 December 19th, 2018, Ms. Xiang was employed?

14 A. That is what the document is
15 suggesting.

16 Q. But you didn't explore with Ms. Xiang
17 when you met with her on June 5th, 2020 whether or
18 not she was employed, correct?

19 A. Correct.

20 Q. Do you see in that same section it
21 says "Difficulty between her mother and
22 mother-in-law, as they have conflict"? Do you see
23 that?

24 A. Yes.

25 Q. Did you explore with Ms. Xiang the

1 G. Frankel, PhD

2 conflict between her mother and mother-in-law?

3 A. No.

4 Q. Did you explore with Ms. Xiang
5 whether or not she suffered any anxiety over the
6 conflict between her mother and mother-in-law?

7 A. No.

8 Q. Did you explore with Ms. Xiang
9 whether or not she felt depressed because of the
10 conflict between her mother and mother-in-law?

11 A. No.

12 Q. Do you see in that same section it
13 refers to "supporting positive communication in
14 ways in which to manage the various stressors"?

15 A. Yes.

16 Q. Did you discuss with Ms. Xiang what
17 the various stressors were?

18 A. No.

19 Q. Wouldn't it have been important to
20 know whether or not Ms. Xiang was suffering from
21 various stressors?

22 A. No.

23 Q. Why not?

24 A. Well, people can have many stressors.
25 It's a question of -- they switch from -- they can

1 G. Frankel, PhD

2 be variable from day-to-day.

3 Q. But you didn't ask Ms. Xiang what
4 those stressors were, correct?

5 MR. ALTARAS: Objection.

6 A. She describes -- in her discussions,
7 she brings up the stressors.

8 MR. MARKEL: I'm sorry. Can you read
9 back her answer?

10 (Whereupon, the record was read back
11 by the reporter.)

12 Q. What stressors did she describe to
13 you that she was suffering as of December 19,
14 2018?

15 A. We didn't discuss specifically
16 related to December 19, 2018.

17 Q. Well, wouldn't it have been important
18 to know what those independent stressors were?

19 MR. ALTARAS: Objection.

20 A. That's -- people have different
21 stressors. This is 2018. People have multiple
22 stressors.

23 MR. MARKEL: Can you read back her
24 answer?

25 (Whereupon, the record was read back

1 G. Frankel, PhD

2 by the reporter.)

3 Q. Wouldn't it have been important for
4 you to know what those multiple stressors were
5 that Ms. Xiang was suffering from in 2018?

6 MR. ALTARAS: Objection.

7 A. As I said, the stressors from 2018
8 can be different than 2019.

9 Q. Wouldn't it have been important to
10 you to know that since Ms. Xiang left Market
11 America in July 2018 what stressors she's
12 experienced since that date?

13 MR. ALTARAS: Objection.

14 A. We focused on her experiences during
15 her work. During work.

16 Q. You focused on her stressors during
17 work while she was at Market America?

18 A. We focused on the emotional
19 consequences from those experiences being
20 terminated when she was pregnant.

21 Q. But you didn't interview Ms. Xiang
22 until June 5th, 2020, correct?

23 A. Correct.

24 Q. Almost two years later, correct?

25 A. Yes.

1 G. Frankel, PhD

2 Q. And it wasn't important to you to
3 know what stressors Ms. Xiang had experienced from
4 July 24th, 2018 until June 5th, 2020 when you
5 interviewed her?

6 MR. ALTARAS: Objection.

7 A. She could have lots of different
8 things happening. She could have a broken leg.
9 That would not be relevant.

10 Q. Wouldn't it have been important to
11 determine what independent stressors she's
12 experienced from July 2018 until June 5th, 2020?

13 MR. ALTARAS: Objection.

14 A. She could have had independent
15 stressors. I can't comment on those independent
16 stressors.

17 Q. Well, how would you be able to
18 evaluate those independent stressors unless you
19 asked about them?

20 A. I couldn't comment on those
21 independent stressors.

22 Q. So you wouldn't be able to evaluate
23 whether or not Ms. Xiang suffered from any
24 independent stressors because you didn't ask about
25 them, correct?

1 G. Frankel, PhD

2 MR. ALTARAS: Objection.

3 A. I did not ask specifically about
4 other stressors.

5 Q. And that would be relevant to whether
6 or not Ms. Xiang was experiencing anxiety,
7 correct?

8 MR. ALTARAS: Objection.

9 A. I focused my description on her
10 anxiety and what she was anxious about.

11 Q. But your affidavit refers to the
12 psychotherapy notes. As you said, it incorporates
13 these psychotherapy notes, correct?

14 A. Yes.

15 Q. Wouldn't it have been important to
16 ask Ms. Xiang about the various stressors that are
17 referenced in these psychotherapy notes?

18 MR. ALTARAS: Objection.

19 A. I did not have a psychotherapy note
20 open during the interview.

21 Q. But you relied on the psychotherapy
22 notes in providing Mr. Altaras with your sworn
23 affidavit, correct?

24 A. I reviewed them.

25 Q. Is it your position today that you

1 G. Frankel, PhD

2 didn't rely on them?

3 MR. ALTARAS: Objection.

4 A. I did not -- I really do not know
5 what you mean by rely.

6 Q. Well, did they help to form the basis
7 of your opinion in your affidavit?

8 A. I looked for consistency and pay
9 attention and look at the diagnosis.

10 MR. MARKEL: Court reporter, can you
11 read back my question?

12 (Whereupon, the record was read back
13 by the reporter.)

14 A. I use my interview to form my
15 opinion.

16 Q. So is it your testimony today that
17 Dr. Jason's notes did not support your opinion in
18 your affidavit?

19 MR. ALTARAS: Objection.

20 A. That is not what I'm saying.

21 Q. Did you incorporate Dr. Jason's notes
22 in your affidavit?

23 A. I reviewed them. I presented
24 information from her notes in my report.

25 Q. Did you rely upon them in making any

1 G. Frankel, PhD

2 determinations in your report?

3 MR. ALTARAS: Objection.

4 A. I'm having trouble with the word
5 "rely." I reviewed them.

6 Q. Well, did they help you to form an
7 opinion with respect to your affidavit?

8 MR. ALTARAS: Objection.

9 A. My opinion is from my interaction and
10 that which I have direct control over.

11 Q. So is it your testimony today that
12 Dr. Jason's notes played no part in rendering any
13 of the statements that you've made in your
14 affidavit?

15 MR. ALTARAS: Objection.

16 Asked and answered.

17 Dr. Frankel, you can answer again.

18 MR. MARKEL: You can stop your
19 speaking objections.

20 A. You used the word "no." Dr. Jason's
21 reports refer to her losing a job, being anxious
22 about finding another job.

23 Q. Are you reading from something right
24 now?

25 A. Yes, I am.

1 G. Frankel, PhD

2 Q. What are you reading from?

3 A. Review of medical records,
4 August 9th, 2018. Her report.

5 Q. Whose report?

6 A. Dr. Jason's progress note.

7 Q. What date are you referring to?

8 A. From the progress note from
9 August 9th, 2018.

10 Q. We're reviewing, Dr. Frankel, a
11 progress note dated December 19th, which is an
12 exhibit that's on the screen.

13 A. Correct.

14 Q. And my question to you is it refers
15 to Ms. Xiang experiencing various stressors,
16 correct?

17 A. Yes.

18 Q. Is it your testimony that you did not
19 explore with Ms. Xiang any of those various
20 stressors that are described in Dr. Jason's
21 December 19, 2018 progress report?

22 MR. ALTARAS: Objection.

23 A. I did not have this progress note
24 open when I was interviewing Ms. Xiang.

25 Q. So you did not explore with Ms. Xiang

1 G. Frankel, PhD

2 any of the statements that are in Dr. Jason's
3 progress notes, correct?

4 MR. ALTARAS: Objection.

5 A. Correct.

6 MR. MARKEL: If you turn to the next
7 page -- Ross, if you could put that on the
8 screen.

9 Q. Dr. Frankel, do you see this
10 document?

11 A. Yes.

12 Q. Does this document state that on
13 February 21st, 2019, there was a termination
14 note --

15 A. Yes.

16 Q. Just let me finish my question.

17 A. Okay.

18 Q. -- that there was a termination note
19 between Ms. Xiang and Dr. Jason?

20 A. Yes.

21 Q. Does this document reflect that
22 Dr. Jason believed her treatment of Ms. Xiang was
23 terminated?

24 MR. ALTARAS: Objection.

25 A. Yes, it indicated termination.

1 G. Frankel, PhD

2 Q. Under the reason for termination,
3 does it say "Patient discontinued contact"?

4 A. Yes.

5 Q. Do you see under the "Treatment Goals
6 and Outcome," it says "Gave birth and was starting
7 to look for other employment"?

8 A. Yes.

9 MR. MARKEL: Ross, if we could go to
10 the next page.

11 Q. Do you see, Dr. Frankel, that these
12 are Dr. Jason's psychotherapy process notes dated
13 March 22nd, 2019?

14 A. Yes.

15 Q. Do you know why Ms. Xiang went back
16 to Dr. Jason on March 22nd, 2019 after not seeing
17 her since December 2018?

18 A. Yes.

19 Q. Why did she go back to Dr. Jason?

20 A. The client explained to me that she
21 became upset again and thought she could benefit
22 from support.

23 Q. Do you know why she became upset
24 again as of March 22nd, 2019?

25 A. She referenced -- in her discussion

1 G. Frankel, PhD

2 with me, she referenced having to talk about the
3 situation of her termination.

4 Q. Did she explain to you who she had to
5 discuss the situation of her termination with?

6 MR. ALTARAS: Objection.

7 A. She said she was having to talk to
8 her lawyer. That was more upfront on her mind.

9 Q. Do you recall what Ms. Xiang said was
10 on her mind with respect to having to talk to her
11 lawyer?

12 MR. ALTARAS: Objection.

13 A. I would, you know, go back to my
14 report and see what she said, but it is consistent
15 with many of the clients when they are back in the
16 legal process, moving from their day-to-day life
17 to then having to discuss the experiences again
18 that their emotions become heightened and they
19 become more anxious, report difficulty with
20 eating, difficulty with sleeping, irritability.
21 Many of their symptoms recur.

22 Q. Did you discuss those specifically
23 with Ms. Xiang?

24 A. We talked about those kinds of
25 symptoms for her, yes.

1 G. Frankel, PhD

2 Q. Did she tell you why talking to her
3 lawyers made her stressed?

4 A. This is consistent with what I
5 observe with many of the clients, that talking
6 about these experiences, as I said, heighten their
7 emotionality. They begin to be raw again. They
8 begin to think about these experiences quite
9 often.

10 Q. Dr. Frankel, I'm not asking you about
11 others. I'm asking you specifically about
12 Ms. Xiang.

13 A. She said -- she reported to me when
14 she was discussing her psychotherapy experiences
15 that she had stopped treatment because of
16 financial issues and then returned when she had to
17 talk about the case because she was upset again.

18 Q. Do you reference anywhere in your
19 affidavit that Ms. Xiang stopped her treatment for
20 financial reasons?

21 A. I do see that she had reported she
22 had to stop treatment April 29th and then she had
23 another session in June of 2020.

24 Q. My question to you is did you include
25 in your report that Ms. Xiang stopped her

1 G. Frankel, PhD

2 treatment with Dr. Jason for financial reasons?

3 A. No.

4 Q. Did you discuss with Ms. Xiang how
5 she was feeling on March 22nd, 2019 when she met
6 with Dr. Jason?

7 MR. ALTARAS: Objection.

8 A. She reported she requested a session
9 with Dr. Jason. So I do recall her having some
10 difficulty with exact date, but she reported she
11 requested a session in June of 2020. She didn't
12 reference the March one, but she says that she was
13 anxious due to the mediation meeting. "The box
14 was opened again" was her quote.

15 Q. Dr. Frankel, I'm talking to you about
16 her session on March 22, 2019, over a year
17 earlier.

18 Did you discuss with Ms. Xiang -- let
19 me finish my question, please.

20 Did you discuss with Ms. Xiang why
21 she was stressed at this time?

22 MR. ALTARAS: Objection.

23 A. No.

24 Q. Do you know whether or not Ms. Xiang
25 had to appear in court in March of 2019?

1 G. Frankel, PhD

2 A. No.

3 Q. Do you know whether or not Ms. Xiang
4 would have had to have seen any of her former
5 colleagues at Market America in March of 2019?

6 A. No.

7 MR. MARKEL: Ross, if we could go to
8 the next page.

9 Q. Dr. Frankel, do you see that this
10 reflects that Ms. Xiang missed an appointment with
11 Dr. Jason on April 12th, 2019?

12 A. Yes.

13 Q. Do you know why Ms. Xiang missed her
14 appointment?

15 A. I do not know why. The report has a
16 comment.

17 Q. What is that comment?

18 A. "Had to stay late at work."

19 Q. Does that reflect that Ms. Xiang was
20 employed as of April 12th, 2019?

21 MR. ALTARAS: Objection.

22 A. It reflects what Dr. Jason wrote.

23 Q. And what did Dr. Jason write?

24 MR. ALTARAS: Objection.

25 A. "Had to stay late at work."

1 G. Frankel, PhD

2 Q. Does that suggest to you, sitting
3 here today, that as of April 12th, 2019 Ms. Xiang
4 was employed?

5 A. No.

6 Q. So do you think this note from
7 Dr. Jason is inaccurate?

8 A. No.

9 Q. Do you think that Ms. Xiang was lying
10 about having to stay late at work?

11 MR. ALTARAS: Objection.

12 A. This is what Dr. Jason wrote.

13 Q. Do you have any reason to believe
14 that what Dr. Jason wrote is not true?

15 A. No.

16 Q. So why do you believe that Ms. Xiang
17 was not employed as of April 12th, 2019?

18 A. I don't have information directly
19 from the client about that particular date.

20 Q. That's because you didn't ask
21 Ms. Xiang whether or not she was employed as of
22 April 12th, 2019, correct?

23 MR. ALTARAS: Objection.

24 A. Correct.

25 MR. MARKEL: We could turn, Ross, to

1 G. Frankel, PhD

2 the next page.

3 Q. Dr. Frankel, this is the
4 psychotherapy progress note of Dr. Jason dated
5 June 3rd, 2020 from 6:45 p.m. to 7:30 p.m.

6 Do you see that?

7 A. Yes.

8 Q. Do you know that Ms. Xiang never saw
9 Dr. Jason from March 22nd, 2019 until June 3rd,
10 2020?

11 A. Ms. Xiang indicated to me that there
12 was a hiatus.

13 Q. Did she indicate to you that it was a
14 15-month hiatus?

15 A. We did not speak about -- you're
16 using 15 months specifically.

17 Q. Ms. Xiang never saw Dr. Jason from
18 March 22nd, 2019 until June 30, 2020, correct?

19 MR. ALTARAS: Objection.

20 A. We are utilizing the progress notes
21 to provide that information.

22 Q. I'm sorry? I didn't hear that.

23 A. I said we're using the progress notes
24 to reflect the question you're asking me to
25 answer.

1 G. Frankel, PhD

2 Q. Well, the progress notes reflect the
3 dates in which Dr. Jason met with Ms. Xiang,
4 correct?

5 A. Correct.

6 MR. MARKEL: Can people hear me?

7 MR. ALTARAS: No. Is there a
8 question pending?

9 MR. MARKEL: Court reporter, can you
10 read back the last question and answer?

11 (Whereupon, the record was read back
12 by the reporter.)

13 MR. MARKEL: I don't know if it's on
14 my end, but it cut out.

15 Can you read it back again?

16 (Whereupon, the record was read back
17 by the reporter.)

18 MR. MARKEL: Dr. Frankel, can you
19 hear me?

20 THE WITNESS: Now I can.

21 MR. MARKEL: Dr. Frankel, can you
22 hear me?

23 THE WITNESS: I can hear you when you
24 say that.

25 MR. MARKEL: Okay.

1 G. Frankel, PhD

2 I apologize --

3 THE WITNESS: It sounded as if it was
4 going to go out --

5 MR. MARKEL: I apologize on my end.

6 MS. D'ANDREA: Keith, you're breaking
7 up. I don't know if you could hear us.

8 MR. ALTARAS: Let's go off the
9 record.

10 (Time noted: 12:14 p.m.)

11 (Recess taken)

12 (Time note: 12:27 p.m.)

13 MR. MARKEL: Ross, can you put back
14 up the notes for Dr. Frankel from June 3rd,
15 2020, 6:45 to 7:30 p.m.?

16 Q. Dr. Frankel, have you seen this
17 document before?

18 A. Yes.

19 Q. Do you know that this reflects the
20 last time Ms. Xiang met with Dr. Jason?

21 A. I couldn't comment if this is the
22 last, last time. I can comment it's the June 3rd
23 report.

24 Q. Do you know whether or not there are
25 any progress notes of any sessions between

1 G. Frankel, PhD

2 Ms. Xiang and Dr. Jason on any date after
3 June 3rd, 2020?

4 A. I don't. These are the ones that I
5 was sent.

6 Q. Were you provided with any progress
7 notes after June 3rd, 2020?

8 A. I would go back to the packet that I
9 received.

10 Q. Well, if I represent to you that the
11 packet that you received is what we've gone
12 through during your deposition today and these are
13 the last dated notes from Dr. Jason, would that
14 refresh your recollection that this is the last
15 time Ms. Xiang saw Dr. Jason?

16 MR. ALTARAS: Objection.

17 You can answer.

18 A. I was going to say Keith, I'll trust
19 you.

20 Q. Do you know whether or not Ms. Xiang
21 spoke to any other psychologist or psychiatrist
22 from July 24th, 2018 until June 3rd, 2020?

23 A. Ms. Xiang reported to me about
24 working with Dr. Jason.

25 Q. Did she indicate to you that she met

1 G. Frankel, PhD

2 with any other psychotherapists?

3 A. She did not indicate to me that she
4 met with anyone else.

5 Q. Did you ask her whether or not she
6 met with anyone else?

7 A. I asked her whether she had been in
8 any psychological treatment. This is what she's
9 reported.

10 Q. Ms. Xiang only reported to you that
11 she met with Dr. Jason, correct?

12 A. Yes.

13 Q. Does this session reflect that she
14 met with Dr. Jason two days before she was
15 interviewed by you?

16 A. Yes.

17 Q. Did you discuss with Ms. Xiang her
18 session with Dr. Jason on June 3rd, 2020?

19 A. Well, yes. We discussed her going
20 back for treatment.

21 Q. Do you know whether or not Ms. Xiang
22 ever went back for treatment again?

23 A. I do not have that information.

24 Q. But if she had gone back for
25 treatment again, would you have been provided that

1 G. Frankel, PhD

2 information?

3 A. I might have been.

4 Q. Have you evaluated Ms. Xiang since
5 June 5th, 2020?

6 A. No.

7 Q. So you don't know whether or not she
8 sought psychiatric treatment since June 23rd,
9 2020, her last session with Dr. Jason, correct?

10 A. Correct.

11 Q. Do you know whether or not Ms. Xiang
12 told Dr. Jason that she was meeting with you two
13 days later?

14 A. I do not have information about that.

15 Q. If I told you that Dr. Jason
16 testified that Ms. Xiang never told her that she
17 was meeting with you on June 5th, 2020, would that
18 surprise you?

19 A. No.

20 Q. Do you think it's odd that Ms. Xiang
21 didn't tell Dr. Jason that she was meeting with
22 you on June 5th, 2020?

23 MR. ALTARAS: Objection.

24 A. No.

25 Q. Do you know that Ms. Xiang had

1 G. Frankel, PhD
2 requested her -- the progress notes from Dr. Jason
3 in order to provide them to you?

4 A. I don't -- wait. I'm sorry.

5 MR. MARKEL: Can you repeat the
6 question?

7 THE WITNESS: Please repeat the
8 question.

9 (Whereupon, the record was read back
10 by the reporter.)

11 A. I would imagine that's the process.

12 Q. Would it surprise you to know that
13 Ms. Xiang didn't tell Dr. Jason why she was
14 requesting her progress notes?

15 MR. ALTARAS: Objection.

16 A. The other clarification is sometimes
17 a law firm connects with the client, so I don't
18 know exactly which specific process in this
19 particular case.

20 Q. Did you ask Ms. Xiang whether or not
21 she had told her psychotherapist, Dr. Jason, that
22 she was meeting with you?

23 A. No, I didn't ask her if she told
24 Dr. Jason.

25 Q. Do you know why Ms. Xiang would

1 G. Frankel, PhD

2 withhold that information from Dr. Jason?

3 A. I would not respond to your use of
4 the word "withhold the information."

5 Q. Do you know why she didn't tell Dr.
6 Jason that she was meeting with you two days
7 later?

8 A. I do not know why she didn't tell her
9 that she was meeting with me two days later.

10 Q. Do you know why Ms. Xiang didn't tell
11 her that she was providing Dr. Jason's progress
12 notes to you?

13 A. I do not know why she would not tell
14 something to her doctor.

15 Q. Did you provide Ms. Xiang with a list
16 of documents that you wanted to review?

17 A. No.

18 Q. How did you meet Ms. Xiang?

19 A. Teleconferencing.

20 Q. How were you first introduced to
21 Ms. Xiang?

22 A. Through Derek Smith Law Group.

23 Q. Had you worked with the Derek Smith
24 Law Group previously?

25 A. Yes.

1 G. Frankel, PhD

2 Q. How many times?

3 A. It would be hard to estimate.

4 Q. More than five?

5 A. More than five.

6 Q. More than ten?

7 A. More than ten.

8 Q. More than 15?

9 A. Yes.

10 Q. More than 20?

11 A. I'd have to look at the particular
12 dates of 2020.

13 Q. Have you provided affidavits in more
14 than 20 cases on behalf of the Derek Smith Law
15 Group?

16 A. Yes.

17 Q. Have you provided affidavits in more
18 than 25 cases on behalf of the Derek Smith Law
19 Group?

20 A. Yes.

21 Q. Have you provided affidavits in more
22 than 30 cases on behalf of Derek Smith Law Group?

23 A. I'd have to count.

24 Q. As you sit here today, would your
25 recollection be that you provided more than 30

1 G. Frankel, PhD

2 affidavits on behalf of the Derek Smith Law Group?

3 A. I would go back to my list.

4 Q. Would it be fair to say that you have
5 provided more than 30 affidavits on behalf of the
6 Derek Smith Law Group?

7 A. As of what time?

8 Q. As of any date.

9 MR. ALTARAS: Objection.

10 A. It's possible it's more than 30.

11 Q. Have you served as an expert witness
12 on behalf of the Derek Smith Law Group or any of
13 its clients?

14 A. Yes.

15 Q. In how many cases?

16 A. The number of cases that you're
17 asking me about.

18 Q. Did any of those cases go to trial?

19 A. I do not have that information.

20 Q. Have you testified on behalf of the
21 Derek Smith Law Group or any of its clients at
22 trial?

23 A. I have not testified in trial.

24 Q. Have you been deposed in any of those
25 cases for which you were proffered as an expert on

1 G. Frankel, PhD

2 behalf of the Derek Smith Law Group or any of its
3 clients?

4 A. Yes.

5 Q. How many times have you been deposed?

6 A. Three.

7 Q. Do you recall the nature of those
8 cases?

9 A. Yes.

10 Q. Were any of those cases pregnancy
11 discrimination cases?

12 A. No.

13 Q. Have you been an expert witness in a
14 pregnancy discrimination case previously?

15 A. Yes.

16 Q. What case was that?

17 A. I don't recall the name and there was
18 one that was related to -- related to pregnancy in
19 a broader way of being able to have private time
20 for breast milk and pumping breast milk.

21 Q. I'm asking you with respect to claims
22 of pregnancy discrimination, were you proffered as
23 an expert in any other case other than this one?

24 MR. ALTARAS: Objection.

25 A. Yes.

1 G. Frankel, PhD

2 Q. Do you recall the name of that case?

3 A. I don't recall the name of the case.

4 I do recall that it was also
5 difficulty around requests to go to doctor's
6 appointments and treatment.

7 Q. Did you testify at trial in that
8 case?

9 A. No.

10 Q. Were you deposed in that case?

11 A. No.

12 Q. Did you issue an expert report in
13 that case?

14 A. Yes.

15 Q. Do you recall the name of the
16 plaintiff in that case?

17 A. No.

18 Q. Do you recall the names of the
19 defendants in that case?

20 A. No.

21 Q. Was Daniel Altaras the attorney
22 responsible for that case?

23 A. I don't remember the name of the
24 attorney in the case at that time.

25 Q. Was that a case that the Derek Smith

1 G. Frankel, PhD

2 Law Group represented the plaintiff?

3 A. Yes.

4 Q. Do you recall how long ago that case
5 was?

6 A. No, I don't remember the specific
7 timing.

8 Q. Was it in the last five years?

9 A. Yes.

10 Q. Was it in the last two years?

11 A. Yes.

12 Q. Was it in the last year?

13 A. I don't recall specifically.

14 Q. Do you recall whether or not that was
15 a case filed in New York Federal Court?

16 A. I don't recall specific levels of
17 court. I mean, it was in New York. I can't
18 testify if it was federal or what level. I'm
19 sorry.

20 Q. Were you qualified as an expert in
21 that case?

22 A. I was not depositioned in that case.

23 Q. Was there any motions that were filed
24 in that case that related to your affidavit that
25 you provided in that case?

1 G. Frankel, PhD

2 A. I have had no contact about that
3 case.

4 Q. Do you know whether or not that case
5 went to trial?

6 MR. ALTARAS: Objection.

7 A. Keith, once again, I have no further
8 feedback about that case.

9 Q. Do you know whether or not that case
10 settled?

11 MR. ALTARAS: Objection.

12 A. I have no further feedback about that
13 case.

14 Q. Do you understand the claims that are
15 being asserted by Ms. Xiang against Market America
16 in this case?

17 A. Can you ask a more specific question?

18 MR. MARKEL: Ross, can we put on the
19 screen the amended complaint?

20 We'll mark this as Exhibit 4.

21 (Whereupon, Exhibit 4 was marked for
22 identification.)

23 Q. Dr. Jason, have you seen this
24 document before?

25 A. Yes.

1 G. Frankel, PhD

2 Q. And how did you obtain this document?

3 A. I received a copy from the Derek
4 Smith Law Group.

5 Q. When did you receive a copy of it?

6 A. I would have to look back in my
7 emails to --

8 Q. Did you -- I'm sorry.

9 A. I was simply saying I would have to
10 look to give you a specific answer, have to look
11 back at my emails.

12 MR. MARKEL: Again, we would request
13 a copy of all emails between Dr. Frankel and
14 the Derek Smith Law Group.

15 MR. ALTARAS: Follow up in writing.
16 We'll take it under advisement.

17 Q. Do you know, Dr. Frankel, whether or
18 not you received this amended complaint before you
19 drafted your affidavit?

20 A. Yes.

21 Q. Yes, you received it before you
22 drafted your affidavit?

23 A. Yes.

24 Q. Did you incorporate portions of this
25 amended complaint in your affidavit?

1 G. Frankel, PhD

2 A. Yes.

3 Q. Did you quote from the amended
4 complaint in your affidavit?

5 A. No. I used the complaint to learn
6 the proper spelling of the parties.

7 Q. Did you take any of the facts alleged
8 in the amended complaint and incorporate them into
9 your affidavit?

10 A. I take facts from the claimant.

11 Q. Did you review the amended complaint
12 to see what claims Ms. Xiang was bringing against
13 Market America?

14 A. Yes.

15 Q. Do you know whether or not Ms. Xiang
16 brought any claims against Market America for a
17 hostile work environment?

18 A. Yes.

19 Q. Can you show me --

20 A. No. You were specifically saying
21 hostile work environment? I would relook at the
22 complaint.

23 MR. MARKEL: Can you look at the
24 amended complaint?

25 Ross, can you scroll through the

1 G. Frankel, PhD

2 amended complaint for Dr. Frankel? If you
3 could, go to the claims section.

4 MR. ALTARAS: I just want to note my
5 objection to this question for the record.

6 Q. Dr. Frankel, do you know whether or
7 not Ms. Xiang brought any hostile work environment
8 claims against Market America?

9 MR. ALTARAS: Objection.

10 A. I'm sorry. I would have to
11 definitely look at that for wording.

12 Q. Are you looking at the amended
13 complaint right now in front of you?

14 A. Well, let's see. I'm sorry. It was
15 going very quickly.

16 Q. I'm asking you do you have a copy of
17 the amended complaint at your desk right now?

18 A. I do not. I was looking -- I think
19 her experience of not being able to have support
20 for her was an experience of a hostile work
21 environment.

22 Q. I'm asking you whether or not she
23 brought any claims against Market America for
24 hostile work environment.

25 MR. ALTARAS: Objection.

1 G. Frankel, PhD

2 A. To respond to your question, I'd more
3 carefully go through the complaint to answer you
4 at this time.

5 Q. I'm happy for you to look at the
6 complaint.

7 A. I don't have scrolling capabilities.

8 Q. So Dr. Frankel, as you sit here
9 today, do you know whether or not Ms. Xiang
10 brought claims against Market America for hostile
11 work environment?

12 MR. ALTARAS: Objection.

13 A. As I said, for this particular case,
14 I would go through the complaint again to look for
15 that specific wording of a hostile work
16 environment as part of the complaint. I do not
17 have the ability to scroll the document at this
18 time. I would have to --

19 Q. As you sit here today, Dr. Frankel,
20 do you know -- yes or no -- whether or not
21 Ms. Xiang brought any claims against Market
22 America for hostile work environment?

23 MR. ALTARAS: Objection.

24 A. My answer is the same. I would look
25 at the complaint specifically for that.

1 G. Frankel, PhD

2 Q. My question to you, Dr. Frankel, is
3 do you know, as you sit here today, whether or not
4 Ms. Xiang brought any claims against Market
5 America for a hostile work environment?

6 MR. ALTARAS: Objection.

7 A. My response is I would look back at
8 the complaint to look --

9 Q. I'm not asking you to look at any
10 document. I'm asking you whether or not you know
11 whether or not she brought a claim against Market
12 America for hostile work environment.

13 MR. ALTARAS: Objection.

14 MR. MARKEL: Ross, you can take the
15 document off the screen, please.

16 Q. Dr. Frankel, as you sit here today,
17 do you know whether or not Ms. Xiang brought a
18 claim against Market America for hostile work
19 environment?

20 MR. ALTARAS: Objection.

21 A. I know the case is for
22 discrimination, harassment and wrongful
23 termination. I would go back to the document to
24 specifically address the hostile work environment
25 and if that's in the --

1 G. Frankel, PhD

2 Q. You're not answering my question,
3 Dr. Frankel.

4 I'm asking you whether or not, as you
5 sit here today, you know whether or not Ms. Xiang
6 brought a claim against Market America for hostile
7 work environment?

8 MR. ALTARAS: Objection.

9 Q. It's a yes or no question.

10 A. No, I do not know at this moment.

11 Q. Do you know, Dr. Frankel, whether or
12 not Ms. Xiang brought a claim against Market
13 America for harassment?

14 MR. ALTARAS: Objection.

15 A. I would go back to reading the
16 complaint for specific --

17 Q. As you sit here today, Dr. Frankel,
18 do you know whether or not Ms. Xiang brought a
19 claim against Market America for harassment?

20 MR. ALTARAS: Objection.

21 A. Yes.

22 MR. MARKEL: You can answer.

23 A. Yes, she experienced harassment.

24 Q. My question to you, Dr. Frankel, is
25 do you know, as you sit here today, whether or not

1 G. Frankel, PhD

2 Ms. Xiang brought a claim against Market America
3 for harassment?

4 MR. ALTARAS: Objection.

5 A. I'm sorry. When you say "brought a
6 claim," I really need a very specific definition
7 of what you mean by claim.

8 Q. Did she bring a claim against Market
9 America accusing Market America of harassment?

10 MR. ALTARAS: Objection.

11 A. I would go back to the complaint and
12 look at the specific language of the complaint.

13 Q. I'm not asking you to go back to the
14 complaint. I'm asking you whether or not you know
15 if she brought a claim of harassment against
16 Market America.

17 MR. ALTARAS: Objection.

18 A. I would go back and read the
19 complaint to look at the specific language.

20 Q. Are you not going to answer the
21 question yes or no as to whether or not you know?

22 MR. ALTARAS: Keith, it's not a yes
23 or no question.

24 MR. MARKEL: It is a yes or no
25 question.

1 G. Frankel, PhD

2 MR. ALTARAS: You've asked the
3 question at least seven times.

4 MR. MARKEL: Daniel, I don't
5 appreciate the speaking objection --

6 MR. ALTARAS: I don't appreciate the
7 questions that are harassing the witness.
8 She's answered --

9 MR. MARKEL: It's not harassing the
10 witness. The witness is not answering the
11 question.

12 MR. ALTARAS: She has answered the
13 question.

14 Q. As you sit here today, do you know
15 whether or not Ms. Xiang has brought a claim of
16 harassment against Market America?

17 MR. ALTARAS: Objection.
18 You can answer again.

19 A. The way in which I respond to do I
20 know is do I have the specific information in
21 front of me to say yes or no. I have not re-read
22 the complaint in the last five minutes, so this is
23 how I'm answering your question.

24 Q. Didn't you say earlier in the
25 deposition that you read the amended complaint?

1 G. Frankel, PhD

2 A. I did.

3 Q. And did you discuss the amended
4 complaint with Ms. Xiang when you met with her on
5 June 5th, 2020?

6 A. No, I did not discuss the amended
7 complaint with Ms. Xiang.

8 Q. Did you ask Ms. Xiang whether or not
9 the statements in the amended complaint were true?

10 A. No, I did not ask her if the
11 statements were true.

12 Q. Did you ask Ms. Xiang whether or not
13 she verified whether or not the statements in the
14 amended complaint were true?

15 MR. ALTARAS: Objection.

16 A. I did not ask her.

17 Q. Did you go through the allegations in
18 the amended complaint and ask her whether or not
19 the allegations were factually accurate?

20 MR. ALTARAS: Objection.

21 A. No.

22 Q. Did you do any independent
23 corroboration with respect to the allegations
24 contained in the amended complaint?

25 MR. ALTARAS: Objection.

1 G. Frankel, PhD

2 A. No.

3 Q. When you met with Ms. Xiang on
4 June 5th, 2020, was that by video?

5 MR. ALTARAS: Objection.

6 A. Yes.

7 Q. So you could see Ms. Xiang on the
8 screen when you were interviewing her?

9 A. Yes.

10 Q. Had you provided Ms. Xiang with
11 certain documents before your interview on
12 June 5th, 2020?

13 A. I did not provide her with any legal
14 documents.

15 Q. Did you provide her with any
16 documents?

17 A. Yes.

18 Q. When did you provide her with those
19 documents?

20 A. Right before the evaluation.

21 Q. When you say right before the
22 evaluation, did you provide those documents to
23 Ms. Xiang on June 5th, 2020?

24 A. I would have to look at my email.

25 MR. MARKEL: Again, we'd call for the

1 G. Frankel, PhD

2 production of any emails between Dr. Frankel
3 and Ms. Xiang related to this case.

4 MR. ALTARAS: Follow up in writing.
5 We'll take it under advisement.

6 Q. Dr. Frankel, do you recall whether or
7 not you provided those documents to Ms. Xiang
8 prior to June 5th, 2020?

9 A. I don't recall the date.

10 Q. Did you ask Ms. Xiang to fill out any
11 forms prior to your meeting with her on June 5th,
12 2020?

13 A. No, not fill out forms prior to
14 meeting.

15 Q. Did you ask Ms. Xiang at the start of
16 your interview to corroborate her identity?

17 A. Yes.

18 Q. Did you ask her to show you
19 identification?

20 A. Yes.

21 Q. What did she show you?

22 A. Her New York State driver's license.

23 Q. And was anyone else present during
24 your interview with Ms. Xiang?

25 A. No.

1 G. Frankel, PhD

2 Q. Do you know whether or not there was
3 anyone else in the room when you interviewed
4 Ms. Xiang?

5 A. It was quiet. There was no
6 indication.

7 Q. Was Ms. Xiang in her home?

8 A. I don't recall, you know, discussion
9 about exactly where she was, but it seemed to be a
10 private space.

11 Q. Did you administer certain tests with
12 Ms. Xiang during your interview of her on
13 June 5th, 2020?

14 A. Yes.

15 MR. MARKEL: Ross, if we could put on
16 the screen as Defendants' Exhibit 5 the
17 various tests. I think it started with --
18 the first document should be the Beck
19 Depression Inventory.

20 MR. ALTARAS: Keith, before we go
21 into these psychological testing, can we take
22 a quick two-minute break so I could go to the
23 bathroom?

24 MR. MARKEL: Sure. Go ahead.

25 (Time noted: 12:57 p.m.)

1 G. Frankel, PhD

2 (Recess taken)

3 (Time noted: 1:01 p.m.)

4 (Whereupon, Exhibit 5 was marked for
5 identification.)

6 Q. Dr. Frankel, do you recognize this
7 document?

8 A. Yes.

9 Q. What is it?

10 A. The Beck Depression Inventory.

11 Q. What is the Beck Depression
12 Inventory?

13 A. It's a 21-question multiple choice
14 health report inventory, one of the most widely
15 used instruments for measuring the severity of
16 depression.

17 Q. Did you use this instrument to
18 measure the depression of Ms. Xiang?

19 A. Yes.

20 Q. And is this your handwriting on this
21 document?

22 A. This is Vivian's handwriting.

23 Q. Did Ms. Xiang fill this out in your
24 presence?

25 A. Yes.

1 G. Frankel, PhD

2 Q. Did you ask her the questions while
3 you were having a video interview of her on
4 June 5th, 2020?

5 A. So this was in June. I don't -- I
6 have people fill them out in front of me. I don't
7 ask the specific questions.

8 Q. So Ms. Xiang filled this out on the
9 video with you on June 5th, 2020?

10 A. No. At this time, I don't recall for
11 her particular interview.

12 Q. Do you know, as you sit here today,
13 whether or not Ms. Xiang filled this out while you
14 were interviewing her on June 5th, 2020?

15 A. I don't recall specifically.

16 Q. Is it possible that Ms. Xiang could
17 have filled this out before you met with her on
18 June 5th, 2020?

19 A. My directions were not to do that.

20 Q. Do you know whether or not she
21 followed your direction?

22 A. I believe she did.

23 Q. When did Ms. Xiang send this to you?

24 A. I would go back to my emails to tell
25 you a specific date.

1 G. Frankel, PhD

2 Q. Do you know whether or not Ms. Xiang
3 sent this to you on June 5th, 2020?

4 A. I would go back to my email.

5 MR. MARKEL: Again, we call for the
6 production of all emails between Dr. Frankel
7 and Ms. Xiang.

8 MR. ALTARAS: Follow up in writing.
9 We'll take it under advisement.

10 Q. As you sit here today, Dr. Frankel,
11 is it your testimony that you didn't administer
12 this test on Ms. Xiang?

13 MR. ALTARAS: Objection.

14 A. I did not read her the questions.

15 Q. Did Ms. Xiang fill out this form on
16 her own?

17 A. I believe she did.

18 Q. Do you know whether or not Ms. Xiang
19 filled out multiple copies of this form?

20 A. I would not have information about
21 that.

22 Q. Do you know whether or not Ms. Xiang
23 filled out this form prior to your interview of
24 her on June 5th, 2020?

25 A. I don't believe she did.

1 G. Frankel, PhD

2 Q. Did you read the instructions to
3 Ms. Xiang on this form?

4 A. No.

5 Q. Do you know whether or not Ms. Xiang
6 read this instructions on this form?

7 A. No.

8 Q. Does this form state that Ms. Xiang
9 should respond to these questions based on how she
10 was feeling during the past two weeks, including
11 the day she filled them out?

12 A. Yes. I believe she would have read
13 the instructions to see how to fill it out.

14 Q. Does this form indicate that she was
15 supposed to fill them out based on how she was
16 feeling during the past two weeks, including the
17 day she filled them out?

18 A. Yes.

19 Q. Do you know whether or not Ms. Xiang
20 followed that instruction?

21 A. I believe she did.

22 Q. Did you ask her whether or not she
23 followed that instruction?

24 A. No.

25 Q. Do you see that the first category is

1 G. Frankel, PhD

2 sadness?

3 A. Yes.

4 Q. Do you see that Ms. Xiang circled
5 "(1) I feel sad much of the time"?

6 A. Yes.

7 Q. Did you ask Ms. Xiang why she felt
8 sad much of the time?

9 A. No.

10 Q. Why not?

11 A. I didn't have her answers during the
12 interview.

13 Q. Is it your testimony that Ms. Xiang
14 provided you with the responses to the test that
15 you provided to her after you interviewed her on
16 June 5th, 2020?

17 MR. ALTARAS: Objection.

18 A. Yes.

19 Q. Did you interview Ms. Xiang again
20 after June 5th, 2020?

21 A. No.

22 Q. Did you interview Ms. Xiang at any
23 point in time between June 5th, 2020 and June 8th,
24 2020?

25 A. No.

1 G. Frankel, PhD

2 Q. Do you see the second category is
3 "Pessimism"?

4 A. Yes.

5 Q. Do you see she circled "I feel more
6 discouraged about my future than I used to be"?

7 A. Yes.

8 Q. Did you ask her why?

9 A. No.

10 Q. Do you see the next question is "Past
11 Failure"? Do you see she circled "(2) As I look
12 back, I see a lot of failures"?

13 A. Yes.

14 Q. Did you ask her what those failures
15 were?

16 A. No.

17 Q. Did you think it was important to
18 understand what failures Ms. Xiang had suffered in
19 the past?

20 A. No.

21 Q. Do you see the next question is "Loss
22 of Pleasure"?

23 A. Yes.

24 Q. Do you see she circled a three?

25 A. Yes.

1 G. Frankel, PhD

2 Q. Do you see it says "I can't get any
3 pleasure from things I used to enjoy"?

4 A. Yes.

5 Q. Did you ask her what things she used
6 to enjoy?

7 A. I would go back to my report and
8 check if I asked her that specific question.

9 Q. Did you ask her whether or not she
10 had any hobbies?

11 A. No.

12 Q. Did you ask her whether or not she
13 had any interests?

14 A. No.

15 Q. Did you ask her whether or not she
16 liked to exercise?

17 A. No.

18 Q. Did you ask her any things that gave
19 her enjoyment?

20 A. I don't know.

21 Q. Do you see the next section is
22 "Guilty Feelings"?

23 A. Yes.

24 Q. Do you see she circled the "(3) I
25 feel guilty all of the time"?

1 G. Frankel, PhD

2 A. Yes.

3 Q. Did you ask her what she was feeling
4 guilty about?

5 A. I didn't ask her about that question.

6 Q. Why not?

7 A. I didn't have the questionnaire in
8 front of me to -- I did not have her responses in
9 front of me. She referenced in our discussion
10 that she felt guilty when other people were
11 carrying her financially.

12 Q. Was there any other thing that she
13 said as to why she felt guilty all of the time?

14 A. No. We didn't talk about guilty all
15 of the time.

16 Q. Do you see the next sentence -- the
17 next section is "Punishment Feelings"?

18 A. Yes.

19 Q. Do you see she's circled "(1) I feel
20 I may be punished"?

21 A. Yes.

22 Q. Did you ask her why she felt that
23 way?

24 A. I did not have her answers as we were
25 interviewing.

1 G. Frankel, PhD

2 Q. Do you see the next one is
3 "Self-dislike"?

4 A. Yes.

5 Q. Do you see she circled a two?

6 A. Yes.

7 Q. And said "I'm disappointed in
8 myself"?

9 A. Yes.

10 Q. Did you ask her why she was
11 disappointed in herself?

12 A. No.

13 Q. Do you see the next section is
14 "Self-criticalness"?

15 A. Yes.

16 Q. Do you see she circled a two?

17 A. Yes.

18 Q. Does that say "I criticize myself for
19 all of my faults"?

20 A. Yes.

21 Q. Did you ask her why she criticized
22 herself for all of her faults?

23 A. No.

24 Q. Did you take any medical history of
25 Ms. Xiang?

1 G. Frankel, PhD

2 A. I did ask her -- I did ask her if she
3 had any underlying medical illnesses.

4 Q. Did you ask her whether or not she
5 had any mental illnesses?

6 A. She indicated that she didn't have
7 any diagnosed mental illness.

8 Q. Did you ask her whether or not she
9 took any medications?

10 A. Yes.

11 Q. What did she say?

12 A. She reported that she was not
13 prescribed any psychotropic medications.

14 Q. Did you ask her whether or not she
15 had taken any psychotropic medications at all in
16 her life?

17 A. She reported she had not taken any.
18 She did say that it was discussed when she was in
19 therapy, but because she was pregnant, she didn't
20 want to take any psychotropic medications.

21 Q. Did you go through her family's
22 medical history?

23 A. No.

24 Q. Did you ask her whether or not her
25 mother had suffered from any mental illness?

1 G. Frankel, PhD

2 A. No.

3 Q. Did you ask her whether or not her
4 father had suffered from any mental illness?

5 A. No.

6 Q. Did you take any psychiatric history
7 of her family at all?

8 A. No.

9 Q. Why not?

10 A. I wanted to focus on her emotional
11 consequences of her experiences at work.

12 Q. Wouldn't it be important to know
13 whether or not her family had suffered from any
14 mental illnesses?

15 MR. ALTARAS: Objection.

16 A. It's additional information, but we
17 look at the patient, the client specifically and
18 look at her behavior.

19 Q. Wouldn't it be important to know the
20 mental health history of her family when
21 evaluating a patient?

22 A. As I said, I stick to the patient and
23 what her behavior is expressing.

24 Q. So is your opinion that you only
25 reviewed the subjective responses of your patient

1 G. Frankel, PhD

2 to determine whether or not they're experiencing
3 any anxiety or emotional distress?

4 MR. ALTARAS: Objection.

5 A. I'm looking at her descriptions of
6 what she's reporting.

7 Q. And you didn't discuss with her the
8 descriptions that she had put on these forms,
9 correct?

10 MR. ALTARAS: Objection.

11 A. Correct.

12 Q. And did you do any objective testing
13 as to whether or not Ms. Xiang was malingering?

14 A. No.

15 Q. If you look at the Section 10,
16 "Crying," did she circle "(2) I cry over every
17 little thing"?

18 A. Yes.

19 Q. Did you ask her why she cried over
20 every little thing?

21 A. No.

22 Q. Did Ms. Xiang give you any examples
23 of how she cried over every little thing?

24 MR. ALTARAS: Objection.

25 A. Yes, in that she said, for example,

1 G. Frankel, PhD

2 she doesn't talk to her friends -- and this also
3 goes to your question of interests. She said that
4 after termination, she doesn't talk to her friends
5 anymore that much and she said she doesn't like to
6 cry in front of her friends. So she has changed
7 how comfortable she is socializing, as well as the
8 fact that she said -- she reported a "loss of all
9 interests of things I used to like to do."

10 Q. Did you do a friend history with
11 Ms. Xiang?

12 A. No.

13 Q. Did you ask Ms. Xiang who her friends
14 were?

15 A. No.

16 Q. Did you ask Ms. Xiang how many
17 friends she had as of July 2018?

18 A. No.

19 Q. Did you ask Ms. Xiang how many
20 friends she had as of June 5th, 2020?

21 A. No.

22 Q. Did you ask Ms. Xiang whether or not
23 she had any social media accounts?

24 A. No.

25 Q. Did you ask Ms. Xiang whether or not

1 G. Frankel, PhD

2 she was on Facebook?

3 A. No.

4 Q. Did you ask Ms. Xiang whether or not
5 she was on Instagram?

6 A. No.

7 Q. Do you know how many friends
8 Ms. Xiang has on Facebook?

9 A. No.

10 Q. Do you know how many followers she
11 has on Instagram?

12 A. No.

13 Q. Did Ms. Xiang indicate to you that
14 she had lost any of her friends as a result of
15 being let go by Market America?

16 A. No, not in that specific way.

17 Q. In any way?

18 A. Well, she says that she doesn't like
19 to talk to her friends much and doesn't go out as
20 much as she used to.

21 Q. Did Ms. Xiang say that anyone stopped
22 talking to her?

23 A. No, she did not use those words.

24 Q. Do you see the next section is
25 "Agitation"?

1 G. Frankel, PhD

2 A. I only have until number ten.

3 MR. MARKEL: Okay. I apologize.

4 Ross, can we go to the next page?

5 Q. Do you see the next section is
6 "Agitation"?

7 A. Yes.

8 Q. Do you see Ms. Xiang circled "I feel
9 more restless or wound up than usual"?

10 A. Yes.

11 Q. Did you ask her what she meant by
12 that?

13 A. No.

14 Q. Did you ask Ms. Xiang whether or not
15 she was filling out this form based on how she was
16 feeling as of the date she filled it out?

17 MR. ALTARAS: Objection.

18 A. I don't recall asking that question.

19 Q. Do you know whether or not Ms. Xiang
20 would have filled this out based on how she was
21 feeling back in July of 2018?

22 A. Those were not the directions.

23 Q. Do you see the next section is "Loss
24 of Interest"?

25 A. Yes.

1 G. Frankel, PhD

2 Q. Do you see that she circled "(3) It's
3 hard to get interested in anything"?

4 A. Yes.

5 Q. Did you ask her what she meant by
6 that?

7 A. She responded that she had said "I
8 lost all interest of things I used to like."

9 Q. Did you ask her what those things
10 were?

11 A. No.

12 Q. Do you see the next section is
13 "Indecisiveness"?

14 A. Yes.

15 Q. And she circled a "(3) I have trouble
16 making any decisions"?

17 A. Yes.

18 Q. Did you ask her why she had trouble
19 making decisions?

20 A. No.

21 Q. Did you ask her if she was always
22 indecisive?

23 A. No.

24 Q. Do you see the next section is
25 "Worthlessness"?

1 G. Frankel, PhD

2 A. Yes.

3 Q. Do you see she circled "(2) I feel
4 more worthless as compared to other people"?

5 A. Yes.

6 Q. Did you ask her why she felt this
7 way?

8 A. No.

9 Q. Did you ask her how long she felt
10 this way?

11 A. No.

12 Q. Did you ask her who the other people
13 she was comparing herself to were?

14 A. No.

15 Q. Do you see the next section is "Loss
16 of Energy"?

17 A. Yes.

18 Q. Do you see she circled a two?

19 A. Yes.

20 Q. "I don't have enough energy to do
21 very much"?

22 A. Yes.

23 Q. Did you ask her what she meant by
24 that?

25 A. No.

1 G. Frankel, PhD

2 Q. Did you ask her if she worked out?

3 A. No.

4 Q. Did you ask her if she was taking
5 care of her two kids?

6 A. No.

7 Q. Did you ask her if she was working
8 9:00 to 5:00?

9 A. No.

10 Q. Do you see the next section is
11 "Changes in Sleeping Pattern"?

12 A. Yes.

13 Q. And do you see she circled "(2b) I
14 sleep a lot less than usual"?

15 A. Yes.

16 Q. Did you ask her how many hours of
17 sleep a night she gets?

18 A. I'd have to go back to my report to
19 look.

20 Q. Does it reflect in your report
21 anything about the hours of sleep Ms. Xiang gets
22 at night?

23 A. No, I don't think so.

24 Q. Did you ask her how many hours of
25 sleep she got before she was let go from Market

1 G. Frankel, PhD

2 America?

3 A. No.

4 Q. Did you ask her how many hours of
5 sleep she got after she was let go from Market
6 America?

7 A. Oh, she did report the process and
8 she said "I couldn't sleep well." I didn't ask
9 for the specific number of hours.

10 Q. Did you ask her how many hours of
11 sleep she got after she worked at Market America?

12 A. No.

13 Q. Did you ask her how many hours of
14 sleep she got before she had children?

15 A. No.

16 Q. Did you ask her how many hours of
17 sleep she got after her first child?

18 A. No.

19 Q. Did you ask her how many hours of
20 sleep she got after her second child?

21 A. No.

22 Q. Did you ask her whether or not her
23 children woke her up in the middle of the night?

24 A. No.

25 Q. If you see, the next section is

1 G. Frankel, PhD

2 "Irritability."

3 A. Yes.

4 Q. Do you see she circled "(3) I am
5 irritable all the time"?

6 A. Yes.

7 Q. Did you ask her what makes her
8 irritable all the time?

9 A. No.

10 Q. Did you ask her whether or not she
11 was irritable all the time before she was let go
12 from Market America?

13 A. No.

14 Q. Did you ask her whether or not she
15 was more irritable after she was let go from
16 Market America than before she was let go from
17 Market America?

18 A. No.

19 Q. Do you see section 18 says "Changes
20 in Appetite"? Do you see that she circled
21 section -- answer "(3b) I crave food all the
22 time"?

23 A. Yes.

24 Q. Did you ask Ms. Xiang what she meant
25 about craving food all the time?

1 G. Frankel, PhD

2 A. No.

3 Q. Were you surprised to read this
4 answer?

5 MR. ALTARAS: Objection.

6 A. No.

7 Q. Did you evaluate Ms. Xiang for an
8 eating disorder?

9 A. No.

10 Q. Eating disorders are one of your
11 specialities, correct?

12 A. Yes.

13 Q. Did you have a sense that Ms. Xiang
14 had a fixation on her weight?

15 MR. ALTARAS: Objection.

16 A. No. There weren't expressions
17 related to a fixation on her weight.

18 Q. Did you ever ask Ms. Xiang whether or
19 not she suffered from bulimia?

20 A. No, I didn't ask her that.

21 Q. Did you ever ask Ms. Xiang whether or
22 not she suffered from anorexia?

23 A. No.

24 Q. Did you ask Ms. Xiang whether or not
25 she had an eating disorder?

1 G. Frankel, PhD

2 A. No.

3 Q. Do you see the next section is
4 "Concentration Difficulty"?

5 A. Yes.

6 Q. Do you see she circled "(1) I can't
7 concentrate as well as usual"?

8 A. Yes.

9 Q. Did you ask her what she was
10 referring to?

11 A. No.

12 Q. Did ask her whether or not she was
13 having any problems at work concentrating?

14 A. No.

15 Q. Did you ask Ms. Xiang whether or not
16 she had any performance issues at her job as of
17 June 2020?

18 A. No.

19 Q. Do you see the next section is
20 "Tiredness or Fatigue"?

21 A. Yes.

22 Q. Do you see that she circled "(3) I am
23 too tired or fatigued to do most of the things I
24 used to do"?

25 A. Yes.

1 G. Frankel, PhD

2 Q. Did you ask Ms. Xiang why she was too
3 tired or fatigued to do most of the things she
4 used to do?

5 A. No.

6 Q. Did you ask her what things she used
7 to do?

8 A. Yes.

9 Q. What were those things?

10 A. Well, she described that -- how she
11 lost interest in things and she said, like, "We
12 used to go out a lot, we don't do anything, I'd
13 rather just be home" and these were -- I
14 particularly focused and asked if these were
15 behaviors before COVID and she said yes, it was
16 before COVID and she said that after termination,
17 she didn't feel like talking to her friends
18 anymore.

19 Q. Did you ask Ms. Xiang whether or not
20 having children impacted her ability to do the
21 things she used to do?

22 A. No.

23 Q. Did you ask Ms. Xiang whether or not
24 she was breast-feeding?

25 A. However, in reference to your other

1 G. Frankel, PhD

2 question about if the kids -- there were things
3 that they were doing and was saying "Now, if it's
4 not for the kids, we don't do anything,"
5 suggesting she did things for herself or had that
6 experience of doing things for herself even though
7 she had kids, but --

8 MR. MARKEL: Court reporter, can you
9 read back my question?

10 (Whereupon, the record was read back
11 by the reporter.)

12 A. I did not ask her whether she was
13 breast-feeding.

14 Q. Did Ms. Xiang specifically tell you
15 the things that she used to do that she no longer
16 does?

17 MR. ALTARAS: Objection.

18 A. She referred to, like, "We used to go
19 out a lot."

20 Q. Did you ask Ms. Xiang what she meant
21 by that?

22 A. No.

23 Q. Did you ask Ms. Xiang whether or not
24 she didn't go out as often because she had two
25 young children?

1 G. Frankel, PhD

2 A. No. She was responding as if it was
3 something they would do.

4 Q. Do you see the next section is "Loss
5 of Interest in Sex"?

6 A. Yes.

7 Q. Do you see she circled "(2) I'm much
8 less interested in sex now"?

9 A. Yes.

10 Q. Did you ask Ms. Xiang about that?

11 A. No.

12 Q. Did you ask Ms. Xiang about her
13 relationship with her husband?

14 A. No.

15 Q. Did you ask Ms. Xiang whether or not
16 her and her husband fought?

17 A. No.

18 Q. Did you ask Ms. Xiang she had ever
19 been abused?

20 A. I asked her if she had experiences of
21 emotional turmoil.

22 Q. Did you ask her whether or not she
23 had ever been physically abused?

24 A. I don't recall.

25 Q. Did you ask her whether or not she

1 G. Frankel, PhD

2 had ever been assaulted?

3 A. She reported she did not have any
4 history of physical or emotional trauma.

5 Q. If we could go to the -- is this
6 document -- by the way, Dr. Frankel, is it dated?

7 MR. MARKEL: Can we go back to the
8 first page, Ross?

9 A. No. It's not dated. It doesn't ask
10 for the date.

11 Q. Again, this date -- withdrawn.
12 The handwriting on this document is
13 Ms. Xiang, correct?

14 A. I asked her to fill it out, so she
15 represented that it was hers.

16 MR. MARKEL: Ross, if we could go to
17 the next document.

18 Q. Dr. Frankel, what is this document?

19 A. That's the Hamilton Depression Rating
20 Scale.

21 Q. Did you provide this document to
22 Ms. Xiang before your interview of her on
23 June 5th, 2020?

24 A. It would have been in the same packet
25 as I provided the prior instrument.

1 G. Frankel, PhD

2 Q. Did Ms. Xiang fill out this document
3 in your presence?

4 A. It would be the same presence.

5 Q. Did Ms. Xiang fill out this document
6 while you were interviewing her via video on
7 June 5th, 2020?

8 A. I don't recall the exact process with
9 this particular claimant at this time.

10 Q. Did you ask Ms. Xiang the questions
11 on this document?

12 A. No.

13 Q. Is your handwriting on this document?

14 A. No.

15 Q. Do you know whose handwriting is on
16 this document?

17 A. Vivian filled it out.

18 Q. I'm sorry. Go ahead.

19 A. Go ahead.

20 Q. Do you know whose handwriting is on
21 this document?

22 A. It's the same as the one before.

23 Q. And who is that?

24 A. Vivian.

25 Q. Did you receive this document after

1 G. Frankel, PhD

2 your interview on June 5th, 2020?

3 A. I received it after.

4 Q. Did you go through Ms. Xiang's
5 responses to this document during your interview
6 on June 5th, 2020?

7 A. No, I did not.

8 Q. Did you go through the responses on
9 this document with Ms. Xiang after June 5th, 2020?

10 A. No.

11 Q. Did you discuss any of the responses
12 on this document with Ms. Xiang?

13 A. No. Well, some of the information
14 may have been discussed.

15 Q. Did you discuss her specific
16 responses to the Hamilton Depression Rating Scale
17 at any point with Ms. Xiang?

18 A. No.

19 Q. Did you explain the scoring system
20 with Ms. Xiang before she filled out this form?

21 A. No.

22 Q. Is there any instructions with
23 respect to this form?

24 A. If we look at page two, there is
25 scoring instructions.

1 G. Frankel, PhD

2 Q. Are there instructions on how to fill
3 out this form?

4 A. They're the instructions that the --
5 just on page one, it just says -- no, it just
6 says, you know, you read it and you respond.
7 People are trained.

8 Q. And Ms. Xiang filled out this form on
9 her own, correct?

10 A. Yes, I believe.

11 Q. And on the second page, are you
12 referring to a scoring scale?

13 A. Yes.

14 Q. And does that reflect different
15 levels of depression?

16 A. Yes.

17 Q. And Ms. Xiang would have seen this
18 scale when she filled out this form, correct?

19 A. She would have seen it when she was
20 filling it out. She may have filled it out and
21 then saw it. I couldn't tell you when exactly she
22 exactly saw that piece of information.

23 Q. But the scale is on the form you
24 provided to her, correct?

25 A. It is there, correct.

1 G. Frankel, PhD

2 Q. Do you know whether or not Ms. Xiang
3 filled out this form more than once?

4 A. I do not have that information.

5 Q. Do you know whether or not there are
6 other drafts of this form that Ms. Xiang
7 completed?

8 A. I do not have information about that.

9 Q. And you didn't go through the
10 responses with Ms. Xiang with respect to this
11 form, correct?

12 A. Correct.

13 Q. Do you see there's a score on the
14 second page of this document?

15 A. Yes.

16 Q. And what does that say?

17 A. That's her writing.

18 Q. So she scored this document herself?

19 A. She appears to.

20 Q. Was that appropriate?

21 A. You know, she did what she did. Most
22 often people do not. That's not how I derive my
23 score.

24 Q. Doesn't this document say that it
25 needs to be administered by a health care

1 G. Frankel, PhD

2 professional?

3 A. Yes.

4 Q. Do you know whether or not Ms. Xiang
5 is a health care professional?

6 A. I don't think she is.

7 Q. Did you do anything independently to
8 check the veracity of Ms. Xiang's responses on
9 this document?

10 MR. ALTARAS: Objection.

11 A. Well, I looked at the -- where the
12 scores are, to see, for example, all the
13 differences is somebody not just going through and
14 putting, let's say, all fours down. I look at
15 scores. For example, under "Anxiety," she didn't
16 put "(4) Incapacitated." Under "Paranoid," she
17 didn't put a four to get a higher score. She
18 didn't say that she was hallucinating.

19 Q. Is that the only thing that you would
20 look at, to see whether or not an individual was
21 putting fours down as --

22 A. I would look to see if she reported
23 -- I would look to see if the information is
24 consistent from what they told me during the rest
25 of the interview.

1 G. Frankel, PhD

2 Q. How would you go about determining
3 whether or not it was consistent if you didn't
4 raise the responses with the individual?

5 A. Well, we're looking at quality of
6 anxiety, looking at quality of physical responses.

7 Q. How would you be able to test those
8 responses if you didn't have a discussion with
9 Ms. Xiang about them?

10 A. It's whether they were referenced.
11 There could be broad discussion. It's whether
12 there's consistency with what -- the question is
13 is she overscoring and is she, you know, showing
14 severe -- and she's not showing, you know, severe
15 stomach pains, for example.

16 Q. My question to you is what did you do
17 to independently corroborate whether or not her
18 statements were accurate?

19 MR. ALTARAS: Objection.

20 A. There's -- I did not.

21 Q. Dr. Frankel, can you repeat yourself?

22 A. I looked across the questionnaires.

23 Q. Do you see on the second page under
24 12 where it says "Somatic symptoms,
25 gastrointestinal, loss of appetite, heavy feeling

1 G. Frankel, PhD

2 in abdomen, constipation," do you see that she
3 gave herself a one?

4 A. Yes.

5 Q. Is that inconsistent with her
6 statement previously that she craves food all the
7 time?

8 A. It's not inconsistent.

9 Q. I'm sorry? I didn't hear your
10 response.

11 A. I said it's not inconsistent.

12 Q. Did you ask her to explain why she
13 felt she had gastrointestinal or somatic symptoms?

14 A. No.

15 Q. Did you ask her whether or not she
16 saw a gastroenterologist?

17 A. No.

18 Q. Did you ask her whether or not she
19 had any prior gastrointestinal medical issues?

20 A. No.

21 Q. Do you see under "Somatic Symptoms
22 (General), heaviness in limbs, back of head,
23 diffused backache, loss of energy and
24 fatigability," that she gave herself a two for
25 severe?

1 G. Frankel, PhD

2 A. Yes.

3 Q. Did you ask her why she had these
4 symptoms?

5 A. No.

6 Q. Did you ask her whether or not she
7 saw a doctor with respect to any of these issues?

8 A. No.

9 Q. Did you ask her whether or not she
10 had any problems picking up her children?

11 A. No.

12 Q. So did you do anything other than
13 review these forms to determine independently
14 whether or not this was an accurate statement?

15 MR. ALTARAS: Objection.

16 A. No.

17 Q. Did you ask her whether or not she
18 suffered from any diseases?

19 A. Yes.

20 Q. And what did you ask her?

21 A. Did she have any other medical
22 illness.

23 Q. Is that reflected in your report that
24 you asked her whether or not she had any other
25 diseases?

1 G. Frankel, PhD

2 A. She -- yes, it says she had no
3 physical medical illnesses prior to the pregnancy
4 that negatively impacted her.

5 Q. Did you ask her whether or not after
6 the pregnancy she had been diagnosed with any
7 medical issues?

8 A. No.

9 Q. Did you ask her prior to becoming
10 pregnant whether or not she had any medical
11 issues?

12 A. No.

13 Q. Do you see in section 15
14 "Hypochondriasis" --

15 A. Yes.

16 Q. -- do you see she gave herself a
17 score of a two?

18 A. Yes.

19 Q. Do you see it says "Preoccupation
20 with health"?

21 A. Yes.

22 Q. Did you discuss with her her
23 preoccupation with health?

24 A. No.

25 Q. Did you discuss with her whether or

1 G. Frankel, PhD

2 not that impacted her mental state?

3 A. Well, there was the earlier question
4 of "Did you have any medical illnesses that
5 contributed to a negative emotional state?" and
6 she reported no.

7 Q. But you didn't explore with her
8 whether or not she had any eating disorders,
9 correct?

10 A. Correct.

11 Q. Do you know why she didn't fill out
12 Section 21?

13 A. No, I do not know why. There could
14 be multiple reasons.

15 Q. I don't want you to speculate.
16 Did you ask her why?

17 A. I don't want to speculate either. I
18 do not know.

19 MR. MARKEL: Okay.

20 So we go to the next document, Ross,
21 which is the Beck Anxiety Inventory.

22 Q. Do you see this document,
23 Dr. Frankel?

24 A. Yes.

25 Q. Do you recognize this document?

1 G. Frankel, PhD

2 A. Yes.

3 Q. What is it?

4 A. It says the Beck Anxiety Inventory.

5 THE WITNESS: Keith, respectfully,
6 may I ask you how much more time you'll need,
7 just so I can -- I do have patients --

8 MR. MARKEL: I think we'll be done --
9 I'm hoping we'll be done before three
10 o'clock. We should be done before three
11 o'clock.

12 THE WITNESS: Thank you.

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. Was this part of the packet that you
16 provided to Ms. Xiang?

17 A. Yes.

18 Q. Did Ms. Xiang fill out this form on
19 her own?

20 A. Yes, that's my understanding.

21 Q. Do you know when Ms. Xiang provided
22 this document back to you?

23 A. In the same packet and timing.

24 Q. Do you know whether or not Ms. Xiang
25 followed the instructions on this document?

1 G. Frankel, PhD

2 A. It looks like she did.

3 Q. Did you ask Ms. Xiang whether or not
4 she filled out this document based on her symptoms
5 during the past month?

6 A. That is what the directions suggest.

7 Q. Did you ask Ms. Xiang whether or not
8 she followed the directions?

9 A. No, I did not ask her that.

10 Q. Did you ask Ms. Xiang whether or not
11 she was experiencing anxiety or distress because
12 of COVID?

13 A. No, I did not ask her that.

14 Q. When Ms. Xiang filled out these
15 forms, it was during the COVID-19 pandemic,
16 correct?

17 A. Yes.

18 Q. Did you discuss with Ms. Xiang her
19 responses to this Beck Anxiety Inventory?

20 A. No.

21 Q. The score at the bottom of this page,
22 was that written by Ms. Xiang?

23 A. It was written by Ms. Xiang and like
24 the other one, it was incorrect and I created my
25 own score.

1 G. Frankel, PhD

2 Q. So it's your testimony that Ms. Xiang
3 scored herself incorrectly?

4 A. Yes.

5 Q. Do you reflect in your report the
6 accurate scores?

7 A. It should be. The score does reflect
8 the severe anxiety range.

9 MR. MARKEL: Could you read back my
10 question?

11 (Whereupon, the record was read back
12 by the reporter.)

13 A. Yes.

14 Q. So you corrected Ms. Xiang's scoring?

15 A. I didn't correct it. I don't use her
16 score, but verbally, I'm communicating to you that
17 her score is not correctly summarized.

18 Q. Do you see that on this Beck Anxiety
19 Inventory she rates "Unable to relax" as severe?

20 A. Yes.

21 Q. Did you ask her why she was unable to
22 relax?

23 A. No.

24 Q. Do you see that she rates her "Fear
25 of worst happening" as severe?

1 G. Frankel, PhD

2 A. Yes.

3 Q. Did you ask her what she was fearful
4 about?

5 A. No.

6 Q. Did you ask her if that was COVID
7 related?

8 A. No.

9 Q. Do you see where it says "Terrified
10 or afraid" that she scores herself as moderate?

11 A. Yes.

12 Q. Did you ask her what she was
13 terrified or afraid of?

14 A. No.

15 Q. Did you ask her if that was COVID
16 related?

17 A. No.

18 Q. Do you see that lists "Fear of losing
19 control" as moderate?

20 A. Yes.

21 Q. Did you ask her what she meant by
22 being fearful of losing control?

23 A. No.

24 Q. Did you ask her whether or not that
25 was COVID related?

1 G. Frankel, PhD

2 A. No.

3 Q. Does it look like she changed her
4 score from mild to moderate for that?

5 A. Yes.

6 Q. Did you take that into consideration?

7 A. Well, you actually asked did she
8 change it from mild to moderate. It does look
9 like she changed it.

10 Q. Did you ask her why she changed it?

11 A. No.

12 MR. MARKEL: Ross, can we go to the
13 next document?

14 Q. Dr. Frankel, are you familiar with
15 this form?

16 A. Yes.

17 Q. What is this form?

18 A. The Depression, Anxiety and Stress
19 Scale.

20 Q. Is this document one that was
21 included in the documents that you provided to
22 Ms. Xiang before your interview with her on
23 June 5th, 2020?

24 A. Yes.

25 Q. Did Ms. Xiang fill out this document

1 G. Frankel, PhD

2 on her own?

3 A. Yes.

4 Q. Did Ms. Xiang provide this document
5 to you sometime after your interview on June 5th,
6 2020?

7 A. Yes.

8 Q. Did you at any point in time go
9 through the responses to the statements on this
10 document with Ms. Xiang?

11 A. No.

12 Q. Did you ask Ms. Xiang whether any of
13 her responses were related to the COVID-19
14 pandemic?

15 A. No.

16 Q. Did you ask Ms. Xiang whether or not
17 her responses were related to how she felt as of
18 June 5th, 2020?

19 A. She was supposed to put down how she
20 felt down.

21 Q. According to this document, she was
22 supposed to respond how she felt in the last week,
23 correct?

24 Dr. Frankel, did you hear my
25 question?

1 G. Frankel, PhD

2 A. I did say yes, it does say within the
3 last week.

4 Q. Do you know whether or not Ms. Xiang
5 followed that instruction?

6 A. I would go back and ask her.

7 Q. Did you ask her whether or not she
8 followed that instruction?

9 A. I did not ask her.

10 MR. MARKEL: Off the record.

11 (Discussion off the record)

12 Q. Dr. Frankel, do you recognize this
13 document?

14 A. Yes.

15 Q. And was Ms. Xiang supposed to fill
16 out this document based on how she was feeling in
17 the last week prior to her filling it out?

18 A. Yes.

19 Q. And do you know whether or not she
20 followed that instruction?

21 A. She represents that she did.

22 Q. Did you ask her specifically whether
23 or not she did?

24 A. No.

25 Q. Did you ask her whether or not she

1 G. Frankel, PhD

2 understood the scaling system on this document?

3 A. I provided instructions that said if
4 you have any questions to please ask me. She did
5 not ask any questions.

6 Q. So you don't know whether or not she
7 understood this document, correct?

8 MR. ALTARAS: Objection.

9 A. I hope that she would have asked me a
10 question if she didn't understand it.

11 Q. Would it surprise you to know that
12 Ms. Xiang testified that she didn't understand
13 some of the scoring and scaling on these
14 documents?

15 MR. ALTARAS: Objection.

16 A. Well, you're asking certainly about
17 scaling and scoring. The question of scoring
18 means -- well, when I hear your question, you said
19 that she doesn't understand the scoring. The
20 scoring means, to me, how am I scoring the
21 questionnaire, so of course she doesn't understand
22 how to score them and what the scoring means.

23 Q. I'm asking you whether or not you
24 would be surprised to know that Ms. Xiang
25 testified that she wasn't -- that she didn't fully

1 G. Frankel, PhD

2 understand how these documents were scaled.

3 MR. ALTARAS: Objection.

4 You can answer if you understand the
5 question.

6 A. I hear your question. People can
7 answer lots of different ways when they're
8 under -- when they're nervous and they're being
9 asked questions by lawyers. So lots of answers
10 are lots of answers. I don't get surprised my
11 things.

12 Q. You didn't ask Ms. Xiang whether or
13 not she had any questions with respect to this
14 form, correct?

15 MR. ALTARAS: Objection.

16 A. She didn't -- she didn't communicate
17 any questions to me. She sent them to me and
18 didn't say anything that she didn't understand
19 anything.

20 Q. Other than providing her the form,
21 you didn't explain the form to her, correct?

22 MR. ALTARAS: Objection.

23 A. I asked her to read each question or
24 each set of directions carefully and if she had
25 any questions, to please ask me.

1 G. Frankel, PhD

2 Q. And she filled out this form on her
3 own, correct?

4 A. You know, that is my -- you know,
5 that was the understanding and direction, that she
6 was to fill them out on her own.

7 Q. Is it your understanding that it's
8 her handwriting on this form?

9 A. Drawing circles or -- for drawing
10 circles, my directions were "Please write your
11 name on each piece." She didn't follow that piece
12 of direction.

13 Q. Did you go through her circles that
14 she provided on this document after she provided
15 the form back to you?

16 A. No.

17 Q. Do you see on the second page of this
18 document it shows a ratings scale from normal to
19 extremely severe for three separate categories of
20 depression, anxiety and stress?

21 MR. ALTARAS: Keith, the second page
22 of the document isn't visible.

23 A. I don't have the second page visible.

24 I know that that is what's on the
25 second page, but I don't have it in front of me.

1 G. Frankel, PhD

2 MR. MARKEL: Ross, can you pull up
3 the second page?

4 Q. Does this reflect, Dr. Frankel, what
5 I just described?

6 MR. ALTARAS: Objection.

7 A. Yes, it is the -- yes, it's a
8 scoring.

9 Q. So Ms. Xiang was able to see the
10 scoring scale for this document, correct?

11 A. Correct.

12 Q. And Ms. Xiang scored herself in these
13 three categories of depression, anxiety and
14 stress, correct?

15 A. Yes.

16 Q. That's Ms. Xiang's handwriting on
17 this document, correct?

18 A. That is a reasonable consideration.

19 Q. It's fair to say, Dr. Frankel, that
20 Ms. Xiang knew the scoring system at least at the
21 time she filled out this document?

22 MR. ALTARAS: Objection.

23 A. It's fair to say she knew it when she
24 got to that page.

25 Q. Do you have any reason to believe she

1 G. Frankel, PhD

2 didn't look at the complete document before she
3 filled it out?

4 MR. ALTARAS: Objection.

5 A. I really can't say -- usually, it's
6 been my experience that when people open things,
7 they just go through this page, this page, this
8 page and this page.

9 Q. Did you instruct Ms. Xiang not to
10 look at the scoring page before she filled out the
11 document?

12 A. I will often say they don't have to
13 worry about any scoring, that's my job.

14 Q. Did you say that to Ms. Xiang in this
15 case?

16 A. It's what I often say.

17 Q. Would that be in your email to
18 Ms. Xiang?

19 MR. ALTARAS: Objection.

20 A. My email -- my email would say "Wait
21 to do this until we talk."

22 Q. But Ms. Xiang didn't wait to do it
23 until you talked to her, correct?

24 A. No. I don't -- I can't answer. She
25 should have done it after my verbal interview with

1 G. Frankel, PhD

2 her and perhaps in my presence.

3 Q. But she didn't do it in your
4 presence, did she?

5 MR. ALTARAS: Objection.

6 A. I don't recall on that particular
7 one.

8 Q. And you didn't go through any of her
9 responses to the 21 questions on this Depression,
10 Anxiety and Stress Scale Form, correct?

11 A. No.

12 Q. No, you didn't go through any of the
13 responses that are on this form?

14 A. No.

15 Q. As you sit here today, you don't know
16 whether or not Ms. Xiang reviewed the second page
17 of this form before she filled it out, correct?

18 MR. ALTARAS: Objection.

19 A. I do not know her particular process
20 with this questionnaire.

21 Q. Is it normal that you would give a
22 patient the scoring before they filled out the
23 form?

24 A. In the stack of papers that just gets
25 sent, it might be there. Most people do not pay

1 G. Frankel, PhD

2 attention to that.

3 Q. If we were not during COVID when you
4 provided these forms to Ms. Xiang, would you have
5 given her the scoring sheet at the same time as
6 you gave her the form to fill out?

7 MR. ALTARAS: Objection.

8 A. You're correct. It depends how -- if
9 the form was reproduced at a time when there were
10 double-sided forms, it appears sometimes on the
11 back of the page. Sometimes it doesn't appear on
12 the back of the page. It depends on what was the
13 reproduction process.

14 Q. Would your practice be to provide a
15 patient who you were providing these tests to the
16 scoring sheet that accompanied or was related to
17 these tests at the same time as when they were
18 filling them out?

19 MR. ALTARAS: Objection.

20 A. Generally not.

21 MR. MARKEL: Okay.

22 Ross, if we could go to the next
23 document in these series.

24 Q. Do you see this document,
25 Dr. Frankel?

1 G. Frankel, PhD

2 A. Yes.

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. What is this document?

6 A. This is the PTSD Symptom Scale
7 Interview that asks questions about specific
8 symptoms of PTSD.

9 Q. Is the handwriting on this document
10 Ms. Xiang's?

11 A. Yes.

12 Q. Was this document included in the
13 documents that you provided to Ms. Xiang before
14 your interview on June 5th, 2020?

15 A. Yes.

16 Q. Was this a document that you
17 discussed with Ms. Xiang during your interview on
18 June 5th, 2020?

19 A. Yes, we discussed it.

20 Q. So you recall specifically discussing
21 this document over your video conference with
22 Ms. Xiang on June 5th, 2020?

23 A. Yes.

24 Q. Why was this document provided to
25 Ms. Xiang?

1 G. Frankel, PhD

2 A. This is part of my interview packet.

3 Q. Why was it being discussed with
4 Ms. Xiang?

5 A. Because claimants usually -- you'll
6 see at the top it says "Index Trauma." Claimants
7 do not know what that means. I also explained to
8 them we want to make sure that you are responding
9 to these specific questions specifically related
10 to why we are having the evaluation, that you're
11 not talking about, let's say, difficulty with your
12 kids or, you know, something else going on.

13 We want to know exactly what is the
14 particular index, the particular experiences that
15 you're responding to as the answer of your
16 question.

17 Q. Did you know when you provided the
18 forms to Ms. Xiang what alleged trauma she had
19 been experiencing?

20 MR. ALTARAS: Objection.

21 A. I would have looked at the complaint.

22 Q. Are there any allegations in the
23 complaint of an assault?

24 MR. ALTARAS: Objection.

25 A. No.

1 G. Frankel, PhD

2 Q. Why did you give this form to
3 Ms. Xiang?

4 A. As I said, it's in my packet and it
5 relates to have you had to go through
6 re-experiencing, are there qualities of the
7 experience that the person had that are
8 continuing. It very specifically goes over the
9 diagnostic characteristics for experiences of
10 trauma and whether they're lasting.

11 Q. Would you give this document to
12 someone who was experiencing anxiety or depression
13 as a result of being terminated from their job?

14 A. Yes.

15 Q. So this document, as far as you're
16 concerned, is given to patients regardless of
17 whether or not they've experienced an assault?

18 A. Yes.

19 Q. Did you discuss with Ms. Xiang the
20 statement indicated on this document by her?

21 MR. ALTARAS: Objection.

22 A. We discussed it in the sense that I
23 told her to, you know, think about what she wants
24 to describe and what she is thinking about as she
25 responds to these questions.

1 G. Frankel, PhD

2 Q. Did you read what she wrote?

3 A. When she provided it.

4 Q. During your interview on June 5th,
5 you said you discussed this form with her, that
6 she had filled it out and you discussed it during
7 your interview, correct?

8 A. Well, I didn't discuss her, let's
9 say, her putting a two number to question number
10 one. What I did was give her -- I said --
11 sometimes people will come up with an index trauma
12 that they write that, let's say, isn't
13 communicating in a sense.

14 Q. Did you fill out this form --

15 A. This is her handwriting. I did not
16 fill out this form.

17 Q. Did she fill out the form with you
18 during your interview on June 5th, 2020?

19 A. I don't -- yes.

20 Q. Did you go through her responses
21 during your interview at that time?

22 A. No. I was just, you know, checking
23 that the index trauma is related to what we're
24 talking about.

25 Q. Did she write her index trauma

1 G. Frankel, PhD

2 description during your call with her on June 5th,
3 2020?

4 A. I believe so.

5 Q. Did you discuss what she wrote?

6 A. She just would have read it back to
7 me and it's consistent with what the case is
8 about.

9 Q. Can you read it out loud?

10 A. "I was let go after I told HR I was
11 pregnant one month after. It makes me" -- so the
12 frame gets cut off, so it's hard, but I quoted in
13 my report what she wrote.

14 "It makes me feel super anxious,
15 angry, sad, hopeless. I lost my job, don't have
16 insurance" -- then the frame is blocking if
17 there's anything there -- "many bills to pay. I
18 was also worried about my baby because I couldn't
19 sleep, can't eat, always crying, everything was
20 wrong." Then she wrote "When I think back, I
21 barely believe that company" and she crossed those
22 off.

23 Q. Did Ms. Xiang fill out this form
24 accurately?

25 MR. ALTARAS: Objection.

1 G. Frankel, PhD

2 A. She gives different responses to
3 different questions.

4 Q. Did Ms. Xiang fill out this form
5 accurately?

6 MR. ALTARAS: Objection.

7 A. She put different time periods to
8 different questions.

9 Q. Is it that she filled that out
10 accurately or inaccurately?

11 A. She followed the directions that she
12 was supposed to do. I'm not sure what you mean by
13 accurately beyond that.

14 Q. Do the directions ask her to fill it
15 out in the past two weeks or less than two weeks
16 if the trauma was less than that?

17 A. It's asking -- it says -- it says in
18 the past -- it directs in the past two weeks.

19 Q. In the past two weeks, had any of
20 what Ms. Xiang described occurred?

21 MR. ALTARAS: Objection.

22 A. She has spoken about being
23 emotionally upset --

24 Q. But Ms. Xiang --

25 A. -- when reminded of the trauma.

1 G. Frankel, PhD

2 Q. Ms. Xiang is referring to events that
3 took place almost two years prior, correct?

4 MR. ALTARAS: Objection.

5 A. Yes.

6 Q. So is she answering what the trauma
7 is that she's experienced over the past two
8 weeks --

9 MR. ALTARAS: Objection.

10 Q. -- as of June 5th, 2020?

11 A. I'm a little confused by your
12 question. I'm sorry for the background noise.

13 Q. Did you ask Ms. Xiang what trauma she
14 was experiencing within the past two weeks of
15 your -- of filling out this form?

16 MR. ALTARAS: Objection.

17 A. The trauma that she -- she's supposed
18 to be filling out the questionnaire as it relates
19 to her experiences of the trauma as she's
20 described it.

21 Q. Within the past two weeks, correct?

22 MR. ALTARAS: Objection.

23 A. No. It's not the trauma she's had in
24 the past two weeks. It's her emotional reactivity
25 within the past two weeks.

1 G. Frankel, PhD

2 Q. Did you explain that to Ms. Xiang?

3 A. Yes.

4 Q. How did you explain it to Ms. Xiang?

5 A. I said "What are the events that
6 you're referring to that you think about as you're
7 referring to these questions?"

8 Q. And did you -- did you probe her
9 responses to these questions?

10 MR. ALTARAS: Objection.

11 A. No.

12 Q. Did you ask Ms. Xiang whether or not
13 she had insurance?

14 A. No.

15 Q. Do you know whether or not Ms. Xiang
16 had insurance through her husband's health
17 insurance?

18 A. No.

19 Q. Do you know whether or not Ms. Xiang
20 had any debt?

21 A. No.

22 Q. Do you know whether or not she had
23 any bills to pay?

24 A. I didn't ask her. Most people do
25 have bills to pay. Most people do have bills to

1 G. Frankel, PhD

2 pay.

3 Q. Did you ask her why in June 2020 she
4 was talking about being concerned about her baby?

5 MR. ALTARAS: Objection.

6 A. Which reference to talking about her
7 baby are you referring to?

8 Q. She says "I was also worried about my
9 baby"?

10 A. She's asked to talk about -- most
11 often for that index trauma, people will simply
12 say "When I lost my job and I was fired from
13 Eagle." She chose to make statements a different
14 way.

15 Q. Do you know why she did that?

16 A. Individual differences.

17 Q. Do you know whether or not her baby
18 has achieved all of his milestones?

19 MR. ALTARAS: Objection.

20 A. No.

21 Q. Do you know whether or not her baby
22 has suffered any disabilities?

23 MR. ALTARAS: Objection.

24 A. No.

25 Q. Did you speak to Ms. Xiang's

1 G. Frankel, PhD

2 children's pediatricians?

3 A. No.

4 Q. Did you ask Ms. Xiang for any medical
5 history with respect to her children?

6 A. No.

7 Q. Did you ask Ms. Xiang to obtain any
8 documents from any of her children's doctors?

9 A. No.

10 Q. When you go down the form, did you --
11 is this Ms. Xiang's handwriting that's next to
12 each of these five categories of
13 "Re-experiencing"?

14 A. I'm not a graphologist.

15 Q. Did you go through the five
16 categories on this form under "Re-experiencing"?

17 A. I did not review the form with her or
18 I did not review her answers with her.

19 Q. Is it fair to say you didn't probe
20 any of the responses that she gave as well?

21 MR. ALTARAS: Objection.

22 A. That's not fair. No. Because some
23 of those would be within the interview that I had
24 with her.

25 Q. For the first category, it says "Have

1 G. Frankel, PhD

2 you had recurrent or intrusive distressing
3 thoughts or recollection about the trauma."

4 Did you discuss with her?

5 A. Qualitatively.

6 Q. What does that mean?

7 A. It means, for example, when she
8 reported she had to get prepared for her
9 mediation, she became very, very upset and
10 distressed.

11 Q. Did you ask her on June 5th, 2020
12 when you were going through this form why she put
13 a two next to that number one?

14 A. I did not ask her on June 5th why she
15 put a two.

16 Q. Did you ask her at any point after
17 June 5th why she put a two?

18 A. No.

19 Q. For the next section, it says "Have
20 you been having recurrent bad dreams or nightmares
21 about the trauma?"

22 Did you ask her whether or not she
23 had had any bad dreams or nightmares about being
24 let go from Market America?

25 A. I would go back to my report.

1 G. Frankel, PhD

2 Q. Do you recall referencing Ms. Xiang
3 having any bad dreams or nightmares as a result of
4 being let go from Market America?

5 A. I believe she more responded that the
6 experience was a nightmare.

7 Q. But Ms. Xiang never told you she had
8 any dreams or nightmares as it relates to this
9 form or question, correct?

10 A. Correct.

11 Q. The next question is "Have you had
12 the experience of suddenly reliving the trauma,
13 flashbacks of it, acting or feeling as if it were
14 recurring?"

15 Did you discuss the fact that she put
16 a two next to this?

17 MR. ALTARAS: Objection.

18 A. When she said it was like -- talking
19 to Dan about the forthcoming mediation, she said
20 it was like opening the box again.

21 Q. Did you ask her how many times a week
22 she felt trauma or distress as a result of that?

23 MR. ALTARAS: Objection.

24 A. No.

25 Q. The next question is "Have you had

1 G. Frankel, PhD

2 been intensely emotionally upset when reminded of
3 the trauma, includes anniversary reactions?" She
4 scored a three there.

5 Did you discuss that with Ms. Xiang?

6 A. That's reflected in her comment about
7 talking about the mediation, the box was open
8 again --

9 Q. Did you ask her --

10 A. -- and how difficult it was and her
11 need to go seek treatment in response to that.

12 Q. Did you ask her how many times a week
13 she experienced that?

14 A. No.

15 Q. As of June 5th, 2020, you're unaware
16 of whether or not Ms. Xiang ever sought
17 psychiatric treatment ever again, correct?

18 A. Correct.

19 Q. Did you go through the rest of this
20 document? It's continued to the next page --

21 MR. MARKEL: Ross, if you could move
22 it to the next page.

23 Q. Did you go through the rest of the
24 scores on this document with Ms. Xiang on
25 June 5th, 2020?

1 G. Frankel, PhD

2 A. No.

3 Q. Did you probe why Ms. Xiang provided
4 these scores on this form?

5 A. No. Well, she had already talked
6 about number nine, loss of interest in free time
7 activities.

8 Q. Had she described to you that -- why
9 she scored a three for category nine?

10 A. No.

11 Q. Are there any other categories on the
12 form that you discussed with her during your
13 interview on June 5th, 2020 or any time after
14 that?

15 A. In the interview, there are
16 discussions about being detached, not seeing
17 friends as much. She talked about difficulty with
18 sleep.

19 Q. Did you probe why she scored herself
20 on the form the way she did?

21 MR. ALTARAS: Objection.

22 A. No.

23 MR. MARKEL: Ross, if we could go to
24 the next document.

25 Q. Dr. Huang, what is this?

1 G. Frankel, PhD

2 A. I was just referred to as Dr. Huang.

3 Q. I'm sorry, Dr. Frankel. I apologize.

4 A. I apologize.

5 Q. What is this document?

6 A. This is an Incomplete Sentence Blank
7 Questionnaire.

8 Q. Why would you give this form to
9 Ms. Xiang?

10 A. Just to explore her responses.

11 Q. Did you go through this document with
12 Ms. Xiang when you met with her on June 5th
13 virtually in 2020?

14 A. No.

15 Q. Was this part of what Ms. Xiang sent
16 back to you after your interview with her on
17 June 5th, 2020?

18 A. Yes.

19 Q. Did you review this document before
20 you issued your affidavit in this case?

21 A. I did review it.

22 Q. At any point in time did you discuss
23 with Ms. Xiang her responses to the form?

24 A. No.

25 Q. Do you see question number three?

1 G. Frankel, PhD

2 A. Yes.

3 Q. The question reads "What annoys me
4 ..." and Ms. Xiang writes "is when lost my
5 patience."

6 Do you see that?

7 MR. ALTARAS: Objection.

8 A. I'm not sure -- I don't know what she
9 wrote. I'm not sure it says patience.

10 Q. Does it look like she crossed
11 something out?

12 A. Yes.

13 Q. Did you probe with her why she
14 crossed something out?

15 A. No.

16 Q. Did you ask her what she meant by
17 "lost my" and it looks like she spelled patient?

18 A. I'm not sure if that says patient.
19 Maybe it does.

20 Q. What do you understand it --

21 A. I didn't -- I didn't see that as
22 reaching a high enough level to pay attention to
23 in terms of -- you're right. It could say
24 patient, but it would be the word patience, so ...

25 Q. Did you ask Ms. Xiang her level of

1 G. Frankel, PhD

2 education?

3 I'm asking you --

4 A. I usually ask if they've gone to high
5 school and any further -- yes, I did.

6 Q. Did Ms. Xiang say that she went to
7 high school in China?

8 A. She also completed a Bachelor of Fine
9 Arts Degree in New York.

10 Q. Did you get that from Ms. Xiang or
11 did you get that from the complaint?

12 A. Ms. Xiang.

13 Q. You asked Ms. Xiang what her
14 educational history was?

15 A. I asked her where she went to school
16 and did she pursue any further education.

17 Q. Do you see in question four it says
18 "I want to know ..." and then she says "when we
19 can get back to normal"?

20 A. She wrote "when we can back to
21 normal."

22 Q. And did you ask her what she meant by
23 that?

24 A. No.

25 Q. Did you think she was referring to

1 G. Frankel, PhD

2 COVID-19?

3 MR. ALTARAS: Objection.

4 A. It's a -- it's a reasonable
5 assumption.

6 Q. For section five, do you see it says
7 "I failed ..." and she wrote "to be a good mom"?

8 A. Yes.

9 Q. Did you probe as to why she feels
10 she's not a good mom?

11 A. No.

12 Q. Why not?

13 A. I didn't have her answers when I was
14 talking to her.

15 Q. Did you make any effort to set up
16 another interview with her after you received her
17 answers?

18 A. No.

19 Q. Do you see on question seven it says
20 "People ..." and she wrote "don't like me much"?

21 A. Yes.

22 Q. Did you ask her why she felt that
23 way?

24 A. No.

25 Q. Do you see on question ten, it says

1 G. Frankel, PhD

2 "I ..." and then she wrote "want to have a day
3 off"?

4 A. Yes.

5 Q. Do you know what she meant by that?

6 A. She wants to have a day off.

7 Q. Did you ask her if she felt
8 overworked?

9 A. No.

10 Q. Did you ask her how many hours a week
11 she worked?

12 A. No.

13 Q. Did you ask her how she was
14 performing at her job?

15 A. No.

16 Q. Did you ask her whether or not she
17 had been disciplined at her job?

18 A. No.

19 Q. Do you see question 14 says "A mother
20 ..." and then she said "is hard"?

21 A. Yes.

22 Q. Did you ask her what she meant by
23 that?

24 A. No.

25 Q. Do you see on the next page --

1 G. Frankel, PhD

2 MR. MARKEL: Ross, if we could go to
3 the next page.

4 Q. Do you see question 18, it asks "I
5 wish ..." and she writes "COVID-19 can be over
6 soon"?

7 A. Yes.

8 Q. Did you ask her about what she meant
9 by that?

10 A. No.

11 Q. Does her response suggest that she
12 was anxious about COVID-19?

13 A. No.

14 Q. What does her response suggest to
15 you?

16 A. She said she'd like it to be over, as
17 does every other person in the world.

18 Q. So is it fair to assume that
19 Ms. Xiang was concerned about that?

20 A. It is fair to say that and every
21 other person in the world, yes.

22 Q. Do you see question 20 says "Marriage
23 ..." and she writes "sucks"?

24 A. Yes.

25 Q. Did you probe why she felt marriage

1 G. Frankel, PhD

2 sucks?

3 A. No.

4 Q. Did you talk about her marriage with
5 her husband?

6 A. No.

7 Q. Did you discuss whether or not her
8 and her husband had any marital problems?

9 A. No.

10 Q. Did you ask Ms. Xiang whether or not
11 she was in marriage counseling?

12 A. No.

13 Q. Do you see in section 21 it says "I
14 suffer ..." and she wrote "a lot"?

15 A. Yes.

16 Q. Did you ask her what she meant by "a
17 lot"?

18 A. No.

19 Q. Did you ask her what she was
20 suffering from?

21 A. No.

22 Q. Do you see question 25 says "My
23 greatest weakness ..." and she writes "is can't
24 control my emotion"?

25 A. Yes.

1 G. Frankel, PhD

2 Q. Did you ask her what she meant by
3 this?

4 A. No.

5 Q. Do you see in question 34 --

6 MR. MARKEL: Ross, if you could go to
7 the next page --

8 Q. -- it says "The worst thing a man can
9 do to a woman is ..." and she writes "is
10 cheating."

11 Did you discuss that with her?

12 A. No.

13 Q. Do you know whether or not her
14 husband ever cheated on her?

15 A. I do not know.

16 Q. Did you ask her whether or not anyone
17 had ever been unfaithful to her?

18 A. I did not ask her.

19 Q. Question 40, it says "I can't ..."
20 and she writes "deal with it."

21 A. I see that.

22 Q. Did you ask her what she was
23 referring to?

24 A. No.

25 Q. Did you ask her what she couldn't

1 G. Frankel, PhD

2 deal with?

3 A. No.

4 Q. Forty-two, the question says "My
5 personality would be much better if ..." and then
6 she writes "I don't get angry or anxious so
7 easily."

8 A. I see that.

9 Q. Did you ask her why she got angry so
10 easily?

11 A. No.

12 Q. Did any of the responses that she
13 gave in response to this form make it into your
14 affidavit?

15 A. Yes.

16 Q. What responses made it into your
17 affidavit?

18 A. Keith, you didn't ask me about number
19 43, which is "I was depressed when I think about
20 the case."

21 Q. Other than question number 43, did
22 any of the ones that we just went through make it
23 into your report?

24 A. Yes.

25 Q. What made it into your report?

1 G. Frankel, PhD

2 A. Number 21, number 32, number 33,
3 number 36, number 41 and I can read them out to
4 you if you want.

5 Q. No, that's great.

6 Did you discuss those numbers that
7 you just read out with Ms. Xiang before you issued
8 your report?

9 A. No.

10 Q. Did you provide a copy of your report
11 to Ms. Xiang before you issued it?

12 A. No.

13 Q. Did you ask Ms. Xiang to confirm
14 whether or not the statements in your report were
15 accurate before you issued your report?

16 A. No.

17 Q. Do you consider yourself an expert in
18 discrimination?

19 MR. ALTARAS: Objection.

20 A. No.

21 Q. Did you do anything to independently
22 corroborate any of the statements that Ms. Xiang
23 provided to you during your June 5th, 2020
24 interview other than looking at the forms she
25 filled out and Dr. Jason's notes?

1 G. Frankel, PhD

2 MR. ALTARAS: Objection.

3 A. No, aside from reading the complaint.

4 Q. Other than reading the complaint,
5 speaking to Ms. Xiang and reviewing Dr. Jason's
6 notes, did you do anything to independently
7 corroborate the statements contained within your
8 report?

9 A. No.

10 Q. Have you ever lectured on the
11 psychological impacts of discrimination?

12 A. No.

13 Q. Have you ever lectured on the stress
14 related to discrimination?

15 A. No.

16 Q. Have you ever lectured on the anxiety
17 related to discrimination?

18 A. No.

19 Q. Have you ever lectured on depression
20 related to discrimination?

21 A. No.

22 MR. MARKEL: Ross, if you could put
23 back on the screen Dr. Frankel's affidavit, I
24 believe it's Defendants' Exhibit 2.

25 MR. ALTARAS: Off the record for a

1 G. Frankel, PhD

2 second, Keith?

3 (Discussion off the record)

4 Q. Dr. Frankel, do you see that your
5 affidavit is dated June 8, 2020?

6 A. Yes.

7 Q. And is that when you gave your
8 affidavit to Ms. Xiang's attorneys?

9 A. I would have to look at the email
10 when I transmitted it.

11 MR. MARKEL: If you look at page --
12 Ross, if you could go to just past page 18,
13 the next page.

14 Q. Dr. Frankel, is that your signature
15 on this page?

16 A. Yes.

17 Q. Does that reflect that this document
18 was notarized on June 11th, 2020?

19 A. Yes.

20 Q. Did your affidavit change between
21 June 8th, 2020 and June 11th, 2020?

22 A. No.

23 MR. MARKEL: If we can go, Ross, to
24 the next page.

25 Q. Dr. Frankel, is this your CV or your

1 G. Frankel, PhD

2 résumé?

3 A. Yes.

4 Q. Does this document list your
5 professional publications and presentations?

6 A. Yes.

7 Q. And did you over the course --
8 withdrawn.

9 Are there approximately 60
10 publications and presentations listed on this CV?

11 A. I'd have to count, Keith. I've never
12 been asked that question.

13 Q. Okay.

14 Does this CV list all of your
15 publications and professional presentations?

16 A. I have more to add in this last year.

17 Q. Are any of the presentations in this
18 last year with respect to the effects of
19 discrimination?

20 A. No.

21 Q. Are any of the professional
22 publications and presentations listed on your CV
23 with respect to discrimination?

24 A. No.

25 Q. If we go to page 28, Dr. Frankel,

1 G. Frankel, PhD

2 does this list your court cases since 2012?

3 A. It does list my court cases.

4 Q. In 2020, it refers to a sexual
5 harassment case.

6 Do you see that?

7 A. Yes.

8 Q. Do you know the name of that case?

9 A. It says cases.

10 Q. Do you know the names of those cases?

11 A. Not offhand.

12 Q. In 2019, it refers to sexual
13 harassment/discrimination/retaliation and wrongful
14 termination case.

15 Do you know the name of any of those
16 cases?

17 A. Not offhand.

18 Q. Again, same -- another entry for 2019
19 says
20 harassment/discrimination/retaliation/wrongful
21 termination cases.

22 Do you know the names of any of those
23 cases?

24 A. Once again, not offhand.

25 MR. MARKEL: Let's take five minutes

1 G. Frankel, PhD

2 really quickly. Just give me two to five
3 minutes to see if I have anymore questions.

4 MR. ALTARAS: No problem.

5 (Time noted: 2:57 p.m.)

6 (Recess taken)

7 (Time noted: 3:00 p.m.)

8 MR. MARKEL: Ross, can you put that
9 document back on up on the screen and if you
10 could turn, Ross, to page 17?

11 Q. Dr. Frankel, can you take a look at
12 paragraph 105 of your affidavit?

13 A. Yes.

14 Q. Do you see there you make a summary
15 statement?

16 A. Yes.

17 Q. And can you read that statement?

18 A. "It is my professional opinion, as a
19 clinical psychologist, with a reasonable degree of
20 certainty, that there is a direct connection
21 between Ms. Xiang's serious negative emotional
22 experiences, experiences of a severe stress
23 reaction, including re-experiencing, avoidance and
24 increased arousal and major depression, severe in
25 her experiences of harassment, discrimination and

1 G. Frankel, PhD

2 wrongful termination."

3 Q. Dr. Frankel, how do you know that
4 Ms. Xiang was discriminated against?

5 MR. ALTARAS: Objection.

6 A. She describes that she was treated
7 differently than other employees.

8 Q. Did you do any independent evaluation
9 as to whether or not Ms. Xiang was discriminated
10 against?

11 MR. ALTARAS: Objection.

12 A. No.

13 Q. How can you say that her stress or
14 her depression is connected to her discrimination
15 when that hasn't been determined?

16 MR. ALTARAS: Objection.

17 A. Her experiences of being treated the
18 ways in which she was.

19 Q. The ways in which she told you she
20 was treated, correct?

21 MR. ALTARAS: Objection.

22 A. Yes, mm-hmm.

23 Q. But you conducted no interviews of
24 anyone other than Ms. Xiang, correct?

25 MR. ALTARAS: Objection.

1 G. Frankel, PhD

2 A. Correct.

3 Q. In your summary at 106, you say
4 "Based on Ms. Xiang's background and history, she
5 has demonstrated personality strength."

6 A. Yes.

7 Q. What background and history are you
8 referring to?

9 A. Well, she's still going. She's still
10 trying. She's trying to take care of her family.

11 Q. So you weren't referring to her
12 medical history or familial history?

13 MR. ALTARAS: Objection.

14 A. She's still trying to be a
15 functioning person. She's not in a hospital or,
16 you know, not doing anything.

17 Q. Do you see in paragraph 115 that she
18 could benefit from continuing weekly therapy and
19 engaging in group therapy sessions for at least a
20 year or more?

21 A. Yes.

22 Q. Do you know whether or not Ms. Xiang
23 has sought psychological treatment since Dr. Jason
24 back on June 3rd, 2020?

25 A. I have not had communication with her

1 G. Frankel, PhD

2 after June 5th.

3 MR. MARKEL: I don't have any further
4 questions for you, Dr. Frankel. I appreciate
5 your time and I apologize that we took a
6 little bit longer -- five minutes longer --
7 than we anticipated.

8 MR. ALTARAS: Thank you, Dr. Frankel,
9 for your time today.

10 THE WITNESS: Thank you, Keith, for
11 your questions. Thank you, Sara, for your
12 help.

13 (Time noted: 3:05 p.m.)

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A C K N O W L E D G M E N T

I, GLADYS FRANKEL, PhD, hereby certify that I have read the transcript of my testimony taken under oath in my examination of February 5, 2021; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

GLADYS FRANKEL, PhD

Signed and subscribed to
before me, this day of
2021.

Notary Public

CERTIFICATION

I, SARA K. KILLIAN, RPR, CCR, do
hereby certify that GLADYS FRANKEL, PhD,
the witness whose examination under oath
is hereinbefore set forth, was duly sworn,
and that such deposition is a true record
of the testimony given by such witness.

I FURTHER CERTIFY that I am not
related to any of the parties to this
action by blood or marriage, and that
I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of February, 2021.

A handwritten signature in black ink, appearing to read "Sara K Killian", with a horizontal line underneath.

SARA K. KILLIAN, RPR, CCR
Notary Public of the State of New York

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WITNESS' NAME: GLADYS FRANKEL, PhD

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GLADYS FRANKEL, PhD

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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